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ORGANIC TENDENCIES IN MEDIEVAL POLITICAL THOUGHT

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I. INTRODUCTION

The purpose of this paper is a re-examination of the thesis set forth by Otto von Gierke: that in medieval political theory there were certain organic tendencies which, because the jurists failed to develop the concept of the real personality of the group, ultimately gave way to an atomistic construction of the state. The paper is not concerned with the actual structure of medieval society, nor with the legal concepts of jurists, but with the theoretical doctrines of the publicists which Gierke interprets in that section of *Das deutsche Genossenschaftsrecht* which, in Maitland's translation,[1] has become a classic for students of political theory. It is my contention that, while his treatment of subordinate issues of medieval political theory is often masterly, Gierke's main theses in regard to the medieval concepts of the nature of the group, the relation of officers to the group, and the relation of groups to one another are fundamentally inaccurate.

To Gierke, the most interesting aspect of medieval political theory was "an internal contest, which in the history of ideas was of more importance than all the external differences between partisans: namely, the contest between properly medieval and 'antique-modern' thought."[2] "Properly medieval" thought, in Gierke's analysis, "starts from the whole, but ascribes an intrinsic value to every partial whole down to and including the individual."[3] Thus it sees the world as an hierarchic structure of entities, each of which, whether a single individual or a group, is an organic unity, with

[1] Otto Gierke, *Political Theories of the Middle Age*, tr. F. W. Maitland (Cambridge, 1900). [2] *Ibid.*, p. 3. [3] *Ibid.*, p. 7.

"a final cause of its own."[4] Each of these organic units is made up of members with varying functions, through which the unity of the whole acts directly.[5] Each is at the same time a whole comprising lesser partial wholes, and a part comprehended in some larger whole. For political theory, the highest and most inclusive group is mankind—whose unity is given outward form in Church and Empire—although mankind is itself but a part in the organic whole of the universe.[6] The unity of this most comprehensive social community is "neither absolute nor exclusive"; it prevails "only up to those limits within which unity is demanded by the oneness of the aim or object of mankind."[7] This principle, repeated in every case in which parts are united in a whole, allows a reconciliation of the independence of the part with the dominance of the whole.[8] Although "properly medieval" theory "starts from the whole," and "sets the whole before the parts," the whole does not entirely absorb the parts; thus for all its organic character, in which it resembles antique thought, medieval theory also holds out its hand to modern theories of natural law by proclaiming "the intrinsic and aboriginal rights of the individual."[9]

This federal reconciliation of larger and smaller groups, and the organic unity of all groups in the series, which Gierke announces as characteristics of "properly medieval" theory, strongly resemble the main features of his own *Genossenschaftstheorie*.[10] The medieval theory, however, failed to take the last step which Gierke regarded as its logical fulfilment: the ascription of real personality to the organic group. From this failure, Gierke contends, there ultimately resulted the victory of the "antique-modern" tendencies of medieval thought: the tendency to concentrate all group life in the state, to dissolve the concept of universal empire into that of a plurality of independent states, to base the state on a mere contract among individuals, to substitute for the delicate medieval harmony an antithesis between individual and group, and, in brief, to reduce all social theory to the mechanical relations of an atomistic individualism.[11]

[4] *Ibid.*, p. 21. [5] *Ibid.*, p. 28. [6] *Ibid.*, p. 10. [7] *Ibid.*, p. 20.
[8] *Ibid.*, p. 21; Gierke, *Johannes Althusius* (Breslau, 1902), pp. 226–227.
[9] *Political Theories of the Middle Age*, p. 7.
[10] For which, cf. especially *Die Grundbegriffe des Staatsrechts* and *Das Wesen der menschlichen Verbände*. The chief part of these two works is translated as an appendix to John D. Lewis, *The Genossenschaftstheorie of Otto von Gierke* (University of Wisconsin Studies, 1935), pp. 139–185.
[11] *Political Theories of the Middle Age*, pp. 29–30, 67–68; ch. 10.

This interpretation has been challenged by Maurice De Wulf[12] on the basis of his intimate and authoritative knowledge of the fundamental ideas of scholastic philosophy. De Wulf argues that it was an axiom of medieval philosophy that "nothing exists except the individual;" that only the individual was conceived to have moral value and a moral destiny; that the group was clearly understood to be merely the instrument by which the individual realized his end; that its unity was as clearly understood to be a merely external and functional unity—a "unity of order;" and that, therefore, the failure of medieval theory to attribute real personality to the group is no cause for surprise or regret, but the logical outcome of individualistic premises and "a triumph of sane reasoning and good sense."[13] Unfortunately, De Wulf's statement of this thesis is not widely known among students of political thought; moreover, it is only scantily documented by references to medieval publicists and does not cover all of Gierke's assertions.

The wide divergence between these two interpretations suggests the desirability of reopening the question of the "organic" tendencies in medieval political thought.

II. THE PURPOSE OF THE GROUP

We may first inquire whether Gierke was correct in asserting that medieval theory conceived the group as having an end of its own distinct from the ends of its individual members. "Properly medieval" theory, Gierke claimed, saw "every being—whether a joint-being (community) or a single-being—as both a part and a whole: a part determined by the final cause of the universe, and a whole with a final cause of its own."[14] "In the universal whole, mankind is one partial whole with a final cause of its own which is distinct from the final causes of individuals and from those of other communities."[15] Each partial body within Church and Empire "has a final cause of its own."[16]

For these important statements, Gierke gives very few references. The first is not footnoted; to support the second and third, he refers to Dante, to Nicholas of Cusa, and to Antonius Rosellinus. The relevant quotations from Dante are the following:

[12] "L'Individu et le Groupe dans la Scolastique du XIII• Siècle," in *Revue Néo-Scolastique de Philosophie*, XXII (1920), 341–357. This essay is repeated with little change in De Wulf, *Philosophy and Civilization in the Middle Ages* (Princeton, 1922), ch. 10.

[13] *Ibid.*, p. 350.

[14] *Political Theories of the Middle Age*, p. 7.

[15] *Ibid.*, p. 10.

[16] *Ibid.*, p. 21.

> . . . It should be noticed that even as there is one end for which nature produces the thumb; and another different end for which she produces the whole hand; and again another, differing from both, for the arm; and another, different from all these, for the entire man; so there is one end for which God made the household; another for the village; another for the city; and another for the kingdom; and, finally, a last end for which the eternal God . . . brings into being universally the human race. . . .
>
> There is, therefore, some proper function for humanity as a whole, to which the universal multitude of men is ordained, to which, indeed, neither one man, nor one village, nor one city, nor a particular kingdom can attain. What that may be would be manifest if one should consider the ultimate potency of mankind as a whole. . . . It appears that the ultimate potency of mankind as such is the intellective potency . . . .
>
> And because all that potency can not be brought into act at one time by one man, nor by any of the particular communities distinguished above, it is necessary that there be a great multitude of the human race, through which all this potency may indeed be brought into act.[17]

Dante proceeds to show that even as the individual needs peace for the rational life, so also does the human race; and therefore it should be organized into a universal Empire, which alone would be an adequate means to such peace.[18] In another passage, he lists the ends of the various partial communities: the household, "whose end it is to prepare its members for living well"; the village, "whose end is the due protection of persons and property"; the city, "whose end is the good and sufficient life"; the kingdom, "whose end is the same as that of the city, with greater security of tranquillity."[19]

It seems obvious that the ends listed for partial groups are simply so many kinds or degrees of service to the ethical destinies of individuals; while the end of mankind, "to bring into act the full potency of reason," is the end which, in Thomist philosophy, was seen as the ultimate end of all individuals as human beings.[20] It is clear that in spite of his loose analogy to parts of the human body, Dante's concept of mankind was a collective concept, and the end "to which the universal multitude of men is ordained" is the *common* end of individuals.

The chapter from Antonius Rosellinus[21] is an argument for monarchy which follows Dante's argument rather closely. Antonius

[17] Dante, *De Monarchia* (*Tutte le Opere*, ed. E. Moore, Oxford, 1904, pp. 341–376), bk. 1, ch. 3. [18] *Ibid.*, bk. 1, ch. 4. [19] *Ibid.*, bk. 1, ch. 5.

[20] Cf. Aquinas, *Summa Theologica*, *Ia*, *IIae*, qs. 1–3; Étienne Gilson, *The Philosophy of St. Thomas Aquinas* (2nd ed., Cambridge, 1929), ch. 16.

[21] Antonius Rosellinus, *Monarchia, s. de potestate imperatoris et papae* (Goldast, *Monarchia*, vol. I, pp. 252–556), pt. 2, ch. 6. Maitland's translation erroneously gives this reference as pt. 1, ch. 6.

cites the household, the village, the city, the kingdom, the "whole earth," and various ecclesiastical units, as bodies ruled by one head; but, unlike Dante, he does not refer to the ends of these groups. From Aristotle's saying, "Parts and the order of parts are to the whole as to an end, this end being better than the parts themselves which are ordained to the end," he deduces that monarchy must also be appropriate to the whole. Then follows the argument that, since the entire human race is a part of "the creatures of God," which are ruled by one God, the human race should follow the same pattern of monarchic rule. It seems clear that Antonius, like Dante, sees the universe as an hierarchy of groups to which monarchic rule is appropriate; but there is no hint that the end of mankind—or, for that matter, of the universe—is anything other than the end of the totality of its members. Nothing else in this chapter is remotely relevant to the subject.

Finally, the section from Nicholas of Cusa[22] has nothing to do with the ends of communities. It deals with the theme that the officers of the Church, and the pope in particular, should not try to usurp one another's functions, since the well-being of the Church depends on the autonomy of each officer in his sphere.

Apparently Gierke's discovery of ends for communities distinct from the ends of their members is founded on very doubtful evidence. Is there any evidence of the contrary point of view?

In the first place, we have Aquinas' definite statement that "the end of the multitude must be considered the same as the end of one man," and his demonstration that the end of a congregated multitude, like that of the individual, is not a virtuous life for its own sake, but "through the virtuous life to attain to the enjoyment of God."[23]

Other descriptions of the ends of communities are similarly concerned with usefulness to individuals. Some emphasize the state as the instrument for the coercion of wrongdoers and the maintenance of peace and justice;[24] others, following the more positive view of Aristotle, describe the purpose of the state to be "not

[22] Nicholas of Cusa, *De Concordantia Catholica* (Bonn, 1928), bk. 2, chs. 27–28.

[23] Aquinas, *De Rebus Publicis et Principum Institutione* [better known as *De Regimine Principum*] (Leyden, 1643), bk. 1, ch. 14.

[24] This emphasis derived from the Stoic and patristic tradition, and was therefore common to most pre-scholastic writers and some later writers. Cf., *e.g.*, Aeneas Sylvius, *De Ortu et Authoritate Imperii Romani* (Goldast, vol. II, pp. 1558–1566), ch. 2.

merely living, but living well,"[25] or "the perfect sufficiency of life,"[26] a purpose which is attained not merely through the coercive power of the state, but also through the organized coöperation which makes available to mankind the material and spiritual requisites of ethical development.

It is scarcely necessary to gather evidence to show that the end of the Church was similarly the service of individual ends; Gierke has no references to the contrary; and one may therefore simply refer to Troeltsch, who, although he describes the Church as, in some ways, an organic group, nevertheless emphasizes that the organic structure of the Christian society differs from what he conceives—I think, not accurately—to be that of the Platonic ideal. For Plato, Troeltsch asserts,

> . . . society realizes an idea of harmony and of the supremacy of the highest spiritual values over Nature; it only does this, however, in general; in particular, it makes use of individuals for the realization of this ideal value, leaving it a matter of entire indifference whether each individual himself has an actual share in the value which is represented by the whole.

With this he contrasts the Christian-organic idea,

> according to which everything depends on the individual sharing in the value of the spiritual personal life which is to be realized through the whole.[27]

In what sense, then, are we to understand the frequent medieval assertion that the common good should be preferred to the good of the individual? We may begin with Aquinas' comment on a frequently-cited saying of Aristotle's:

> For if the good of the individual and of the state is the same, it seems greater and more perfect to further and preserve that of the state. For it is indeed lovely to seek the good of one man only, but better and more divine to further that of a people and of states.

Aquinas explains:

> He shows that the political good is the more principal, from the *ratio* itself of a proper end. For it is manifest that any cause is prior and more im-

[25] Marsiglio of Padua, *Defensor Pacis* (ed. C. W. Prévité-Orton, Cambridge, 1928), bk. 1, ch. 4, sec. 2.

[26] Aquinas, *Commentary on Nicomachean Ethics* (*Opera*, Parma ed., vol. XXI), bk. I, *lectio* 1; cf. also Aegidius Romanus, *De Regimine Principum* (Rome, 1482), bk. 3, pt. 1, ch. 2; bk. 3, pt. 2, ch. 32; John of Paris, *De Potestate Regia et Papali* (Goldast, vol. II, pp. 108–147), ch. 1.

[27] Ernst Troeltsch, *The Social Teachings of the Christian Churches* (tr. O. Wyon, New York, 1931), Vol. I, p. 299.

portant, in proportion as it extends itself to more things. Whence also the good, which has the *ratio* of a final cause, is more important in proportion as it extends itself to more things. And therefore, if the good of the individual and of the whole state is the same, it seems much greater and more perfect to further and preserve the good of the whole state than the good of one man.[28]

If this is organic theory, Bentham is the prince of organicists.

In no instance of the use of the term "common good," so far as I can discover, has it any meaning other than "the good common to the individual members." Such a phrase is often used interchangeably with "the common good."[29] The principle of the superiority of the common good to the good of the individual is used in two contexts: the duty of the ruler to subordinate his private ends to the good of the community,[30] and the duty of any individual to make material sacrifices for the greater good of the whole.[31] Both these uses are entirely consistent with an individualistic and quantitative interpretation.

In short, on this question of the relation of the ends of groups to the ends of individuals, I have been unable to find any evidence which clearly supports Gierke's interpretation, and, on the contrary, considerable evidence to support De Wulf's contention that medieval thinkers recognized no destiny except the destiny of individuals, assigned no purpose to the state or other social groups except the service of individual ends, and understood the "common good" as equivalent to the good of a totality of individuals.

III. THE UNITY OF THE GROUP

We may now ask how medieval thinkers conceived the unity of the political group. Was it, as Gierke says, the unity of "an organic whole," "a single being"?[32]

[28] Aquinas, *Commentary on Nicomachean Ethics*, bk. 1, *lectio* 2.

[29] Cf., *e. g.*, Aegidius Romanus, *op. cit.*, bk. 3, pt. 2, ch. 2; Occam, *Dialogus* (Goldast, vol. II, pp. 393–957), pt. 3, tr. 1, bk. 2, ch. 6; Dante, *op. cit.*, bk. 2, ch. 5. An interesting example of the quantitative interpretation of the common good is found in Occam, who justifies the granting of privileges to individuals on the ground that, since a private person or particular college is a part of the whole community, "the good of any private person or particular college is the good of the whole community." *Op. cit.*, pt. 3, tr. 2, bk. 2, ch. 27.

[30] For an extreme statement of this commonplace idea, see Aegidius Romanus, *op. cit.*, bk. 3, pt. 2, ch. 26. Cf. also the references in *Political Theory of the Middle Age*, n. 124.

[31] This doctrine is less common, but equally consistent with medieval premises. For a vigorous statement, see Aeneas Sylvius, *op. cit.*, chs. 17–18. Cf. also Dante, *op. cit.*, bk. 2, ch. 8.

[32] *Political Theories of the Middle Age*, p. 68.

From what has been said above, we may describe the political group envisaged by medieval publicists as unified through an end common to all its members. Secondly, the group is unified by submission to a unitary will directing it to the common end: the will of the ruler. Far from positing an inherent unity of will in the community—or even the spontaneous agreement of wills assumed by democratic theorists—medieval thinkers agree that, without the will of the ruler as the unifying principle, the multitude would be "dispersed in all directions." No one puts this more strongly than Dante:

> Concord is a uniform movement of several wills. . . . For even as, if they did this voluntarily, we should call several lumps of earth concordant because they all fall to the center, and several flames concordant because they all ascend to the circumference, even so we call several men concordant when they are moved at the same time in accordance with a will toward one end, an end which is formally present in their wills. . . . For the volitional faculty is a certain potency, and the species of apprehended good is its form, and this form, like other forms, being one, is multiplied in itself according to the multiplicity of the receiving matter. . . .
>
> All concord depends on unity existing in the wills; mankind at its best is a kind of concord. . . . Therefore, for mankind to be at its best depends upon unity among wills. But this unity can not exist unless there be one will, the mistress and regulator of all the others unto unity. . . . Nor can that one will exist, unless there be one prince over all, whose will can be the mistress and regulator of all the others.[33]

Another vigorous statement of the same idea is found in Aquinas:

> It is necessary that there be among men something through which the multitude may be ruled. For when there exist many men, and each looks out for what is suitable for himself, the multitude would be dispersed in diverse directions, unless there were someone having the care of that which pertains to the good of the multitude. . . . Moreover, this is based on reason: for there is a distinction between that which is private and that which is common. According to private ends men differ, but in a common end they are united; now diverse ends have diverse causes. Therefore, besides that which moves to the private good of each individual, it is fitting that there be something which moves toward the common good of the many.[34]

Thus the absence of any unity in the group except the unity of the common end is made the very basis of the medieval argument for monarchy.[35] But it was also a first assumption of those who

[33] Dante, *op. cit.*, bk. 1, ch. 15.

[34] Aquinas, *De Regimine Principum*, bk. 1, ch. 1. This statement is repeated in a not very clear condensation by John of Paris, *op. cit.*, ch. 1.

[35] This is very different from Gierke's statement (*Political Theories of the Middle Age*, pp. 31–32) that the ruler was needed to "represent" the unity which was the

advocated other forms of government, and who therefore were concerned to show that a plurality of rulers was not inconsistent with a unity of directing will.[36] In the mixed polity, which was perhaps the medieval favorite after monarchy, the principle of unity was still provided by a one-man executive.[37]

The unity of the state thus achieved was defined by Aquinas and Marsiglio as a "unity of order." This type of unity Aquinas carefully distinguished from unity in its absolute sense (*simpliciter*):

> Moreover, it ought to be known that this whole which a civil multitude or domestic family is has only the unity of order, according to which it is not one in the absolute sense. And therefore a part of this whole can have an operation which is not the operation of the whole, even as a soldier in the army has an operation which is not that of the whole army. Nevertheless the whole itself also has some operation which does not belong to any one of the parts, but to the whole, as a battle belongs to the whole army. And the towing of a boat is an operation of the many who tow the boat. Now there is a kind of whole which has unity not only by order but by composition or connection, or even by continuity, according to which unity it is, in the absolute sense, one; and therefore there is no operation of the part which is not that of the whole. For in continuous things, there is the same movement of the whole and of the part; and likewise in things composed or connected the operation of the part is, in principle, that of the whole.[38]

Marsiglio was also careful to distinguish between unity of order and inherent unity:

> It now somewhat appears what the numerical unity of a state or kingdom is, because this unity is a unity of order—not unity in the absolute sense, but a plurality of persons which is called one, not because they are one in number formally through some form, but rather for this reason: that they are said to be ordained to one, namely, the government, to whom and by whom they are ordained and governed. For the state or kingdom is not one through any natural form of oneness, as in the case of a composite or mixture; because its parts or offices, and the ultimate

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"essence" of the "social organism." For further references, cf. John of Paris, *op. cit.*, ch. 1; Engelbert of Admont, *De Ortu et Fine Romani Imperii* (Basel, n. d.), chs. 11, 12; Aquinas, *De Regimine Principum*, bk. 1, chs. 2, 5; Aegidius Romanus, *op. cit.*, bk. 3, pt. 2, ch. 3; Antonius Rosellinus, *op. cit.*, pt. 2, chs. 5–7; Alvarus Pelagius, *De Planctu Ecclesiae* (Venice, 1560), bk. 1, ch. 62.

[36] Marsiglio, *op. cit.*, bk. 1, ch. 17, sec. 2. Cf. also Occam, *Octo Quaestiones* (Goldast, vol. II, pp. 314–391), q. 1, ch. 6; Occam, *Dialogus*, pt. 3, tr. 1, bk. 2, ch. 25.

[37] Cf. Aegidius Romanus, *op. cit.*, bk. 3, pt. 2, ch. 4; Gerson, *De Potestate Ecclesiastica* (*Opera Omnia*, ed. Ellies du Pin, Antwerp, 1706, vol. II, pp. 114 ff.), consid. 13; Aquinas, *Summa Theologica*, *Ia*, *IIae*, q. 97, a. 1.

[38] Aquinas, *Commentary on Nicomachean Ethics*, bk. 1, *lectio* 1. I owe this reference to De Wulf; Gierke also knew this passage, but seems to have missed its significance: *v. Political Theories of the Middle Age*, p. 10 and n. 4.

subjects (*supposita*) or parts of these parts, are many in act, and separated formally in number from one another, because they are separated by place and by subject. Whence they are not one either through any oneness formally inherent, nor through any oneness permeating them or containing them like a wall.[39]

From these references, it seems safe to suggest that medieval thinkers were expressing in their own language a distinction parallel to that between "organism" and "organization;" and, since I can find no references to any other interpretation of the unity of the civil community, and since the prevailing trends of medieval philosophy would be hostile to any other interpretation, it may also be suggested that Gierke's description of the "properly medieval" view of this unity obscures, if it does not misinterpret, the actual concept. It follows also that the possibility of ascribing real personality to the civil group was precluded by the very premises of medieval political thought; and that the legal personality of the group must necessarily have been placed where medieval thinkers placed it: in the ruler, who alone could give any sort of unity to an otherwise amorphous and discordant mass of individuals.

IV. THE UNITY OF THE CHURCH

Further evidence of the medieval view of the group may be found by examination of several important discussions of the unity of the Church. Gierke easily demonstrates by a long list of references[40] that medieval writers spoke of the Church as a unity, as the "mystic body" of Christ. But for complete understanding it is necessary to raise questions which Gierke does not ask. In what sense was the Church conceived as a "mystic body"? How was its unity understood by those writers who attempted clear definition of these familiar terms?

The analogy between the mystic body of Christ and the natural body of man was examined with great care by Aquinas:

In the natural body is found a quadruple union of the members to one another. The first is according to conformity of nature, because all members consist of the same like parts, and are of one *ratio*, even as the hand and foot of flesh and bone; and thus the members are called one in genus or species. The second is through the binding of them to one another by nerves and joints; and thus they are called one by continuity. The third is according as the vital spirit and forces of the soul are diffused through the whole body. The fourth is according as all members are perfected by

[39] Marsiglio, *op. cit.*, bk. 1, ch. 17, sec. 11. Gierke does not refer to this passage.
[40] *Political Theories of the Middle Age*, n. 7.

the soul, which is numerically one in all the members. And these four unions are found in the mystic body. The first, inasmuch as all its members are of one nature either in genus or species. The second, inasmuch as they are bound to one another by faith, because thus they are continuous in the one thing believed. The third, according as they are vivified by grace and love. The fourth, according as in them is the Holy Spirit, who is the ultimate and principal perfection of the whole mystic body, like the soul in the natural body. Moreover, of the said unions, the first is not union in the absolute sense, because that in which is this union is not numerically one as in the case of the three following; because through faith in and love of the numerically one thing believed and loved, they are united; likewise the Holy Spirit, one in number, fills all.

It is evident that Aquinas regards the unity of the Church as closer than that of the civil community; but even in the case of the Church he does not visualize the inherent unity of an organism. Answering an objection, that there is no unity in the Church because

all men do not convene in some numerically one thing, both because they themselves differ, and because faith and hope and love, by which they are connected to one another, are diverse in number in the diverse men,

Aquinas grants this individuation of the forms, and merely insists that

even as in the natural body forces diffused through all members differ in number according to existence, but convene in a root numerically one, and besides this have an ultimate form, numerically one, so also all members of the mystic body have for ultimate complement the Holy Spirit, who is one in number, in all; and love itself, diffused in them by the Holy Spirit, although in existence it may differ in the diverse, yet convenes in a root numerically one. Moreover, the root of an operation is properly its object, from which it derives species; and therefore, inasmuch as numerically the same thing is believed and loved by all, the faith and love of all are accordingly united in a root numerically one—not only the prime root, which is the Holy Spirit, but also the proximate, which is the proper object.[41]

Thus in the case of the Church we have a kind of unity which Marsiglio, at least, seemed to deny for the political state: the unity secured by the similar actuation of each member by the same ultimate form—a form which, in itself, is numerically one, though individuated by its union with each separate member.[42] Thus

[41] Aquinas, *Commentary on Sentences of Peter Lombard* (*Opera*, Parma ed., vol. VII), bk. 3, dist. 13, q. 2, a. 2, *quaestiuncula* 2. Gierke does not refer to this passage. Elsewhere, as Gierke points out (n. 81), Aquinas mentions other differences between the mystic and natural bodies: e. g., that the members of the mystic body do not all exist simultaneously (*Summa Theologica*, pt. 3, q. 8, a. 3).

[42] But cf. Dante, *op. cit.*, bk. 1, ch. 15, cited above.

Aquinas reconciles the doctrine of the unity of the Church with the Aristotelian scheme in which nothing exists except the individual.

A further development of the same general approach is found in the fourteenth-century treatise of James of Viterbo.[43] He begins by pointing out that,

since the Church is a multitude, it is more properly called "united" than "one"; and its connection is more properly called "union" than "unity"; yet according to the common usage of speech and in the Scripture the one term is indifferently used for the other, and thus they are to be used indifferently.

The formal cause of the "unity" of the Church is the three virtues, faith, hope, and love; its efficient cause, the Trinity, or, in particular ways, any of the Three Persons of the Trinity. One may find a threefold mode of unity, or union, in the Church: the "unity of totality," because it is "like one whole" whose parts are individual believers and particular churches, which in turn are divisible into individual believers; the "unity of conformity, because in all parts and members of the Church there is something in respect of which they resemble and conform to one another"—that is, faith, hope, and love, which "are in the faithful themselves as certain spiritual perfections and forms"; and the "unity of attribution," since "all the faithful have attribution to one end, which is salvation and eternal beatitude, and to one *principium* and Head"—the Trinity, or, in a special sense, Christ. To this threefold unity, James adds "another twofold mode of unity," secured through the diversity in degree of grace, in rank, and in office within the Church: for this very diversity makes for perfection, "which is a kind of unity," and for a unity of order, "even as the universe itself is called one according to a unity of order." The unity of order, as James elsewhere shows by arguments like the usual medieval arguments for monarchy, demands the ultimate control of a single human ruler.[44]

But James of Viterbo, although he has discovered so many modes of unity for the Church, also makes it clear that

[43] *Le plus ancien traité de l'église, Jacques de Viterbe, De Regimine Christiano (1301–1302)*, ed. H. X. Arquillière (Paris, 1926), pt. 1, ch. 3. While this treatise was not widely circulated in the Middle Ages and is not included in Gierke's bibliography, the chapter in question here was reproduced almost verbatim in the widely-read *De Planctu Ecclesiae* of Alvarus Pelagius. Gierke cites Alvarus' work in other connections, but does not discuss this important chapter (bk. 1, ch. 63).

[44] James of Viterbo, *op. cit.*, pt. 2, ch. 5. That the papacy was necessary to the unity of the Church was, of course, a commonplace doctrine.

the Church can not be called one as a man is called one, by unity of subject (*suppositum*) and of person, unless perhaps by analogy. . . . But the Church is called one by collection, even as many men are one people.[45]

His phraseology throughout shows that his conception, like that of Aquinas, is based on the Aristotelian metaphysics, which would inevitably preclude any such personification of the Church as Gierke considered the logical conclusion of "properly medieval" thought. The Church is seen as an ordered grouping of individuals, who, as individuals, participate in the common gifts of grace; who, as individuals, have a similar relation to a common end, a common cause, and a common Head.

Seen against the background of the writings of Aquinas and James of Viterbo, Turrecremata's fifteenth-century discussion of the unity of the Church appears as the final clarification of the trends of thought which logically issued from the medieval adoption of an Aristotelian philosophy. The unity of the Church, according to Turrecremata, is a unity through its one Head, one faith, one baptism, one hope, one love, one vivifying Spirit, one ultimate end, and one earthly ruler.[46] In a group of important chapters, based largely on the sections from Aquinas and James of Viterbo already discussed, Turrecremata examines the nature of the unity so produced. He mentions[47] that "there is an argument" that the unity of the Church is a unity of essence, this argument being based on a number of quotations from the Bible, notably Christ's prayer that "they may be one, as I and the Father are one." He refutes this position by reference to Aquinas' distinctions and by such explanations as that there is a unity of love between Father and Son as well as a unity of essence. In a discussion of the unity of the Church with its Head, he points out that there are three kinds of unity: in nature, e.g., the unity of the Trinity; personal unity, e.g., the unity of humanity and divinity in Christ; and unity through conformity of will, which is the unity of Head and Body in the Church.[48] Those who speak of Christ and His Body as one man, or one person, are to be interpreted "mystically or figuratively."[49] In another section of his work, Turrecremata introduces a series of telling attacks on the conciliarists by reminding them that, as Aquinas had already pointed out, the unity of the

[45] *Ibid.*, pt. 1, ch. 3.

[46] John of Turrecremata, *Summa de Ecclesia contra Impugnatores Potestatis Summi Pontificis* (Rome, 1489), bk. 1, ch. 6. [47] *Ibid.*, bk. 1, ch. 60.

[48] *Ibid.*, bk. 1, ch. 62. [49] *Ibid.*, bk. 1, chs. 63, 65.

Church is a unity of object, not of subject. Since there is no inherent subjective unity in the Church, he argues, the Church could be a subject of power only as an aggregate of individuals of varying rank and office, and thus, by the rules of corporation law, could not have the kinds of power claimed for it by the conciliarists. Gierke characterizes Turrecremata's argument at this point as the result of the frustration of earlier organic tendencies,[50] but the premise from which it proceeds is simply a sharper statement of Aquinas' position. The mystic body of the Church is unlike the natural body of man,

> because members of the human body constitute some real whole, one in number, which, subjectively in itself as a whole, is capable of any form, or quality, or real influx; and this whole is the human body itself. Not so, however, are the so-called members of the mystic body: since, although the faithful, as Augustine says, are united by faith, hope, and love, yet, because they are distinguished in persons and places, they are not said to constitute some real whole, one in number, which subjectively in itself is capable of any form, or quality, or influx of a real effect. Whence, when the Church is called one by unity of faith, hope, and love, it ought not to be understood that the *habitus*, one in number, of faith, the *habitus*, one in number, of hope, the *habitus*, one in number, of love are in the whole body itself, since the body itself of the Church can not be the subject of such forms . . . but there are as many numerically distinct *habitus* of the virtues of faith, hope, and love as there are believers. Therefore, when one speaks of one faith of the Church, one hope, one love, the unity is not on the part of a numerically one subject of these, because no such subject exists; but on the part of the object: namely, because all believers who by number and merit are in the body of the Church believe the same thing, hope the same thing, love the same thing. Thus says S. Thomas in III, distinction XIII.[51]

These quotations represent the dominant tendency in medieval thought on the question of the unity of the Church. Was there, however, any opposing trend, to which Gierke might wish to ascribe the name of "properly medieval"? I have found no examples of it,[52] and Gierke gives no references for such an interpretation.

The supernatural aspects of the Church made it possible for medieval thinkers to ascribe to it various kinds of unity which they did not find in the secular community. Whether this unity

[50] *Political Theories of the Middle Age*, pp. 71–72.

[51] Turrecremata, *op. cit.*, bk. 2, ch. 71.

[52] Except the anonymous argument which Turrecremata refutes in bk. 1, ch. 60, discussed above. There seems no reason to give this any particular weight. In view of Gierke's particular emphasis on Cusa as an "organic" thinker, I have given some pains to an examination of his theory of *Concordantia*. His thought is difficult to follow, but I find nothing in it inconsistent with the interpretation set forth above.

should be called organic is a question of terminology, which cannot be discussed here—though one may remark that it would seem at least discourteous to label so bluntly a concept which to medieval minds was capable of so many "modes" and delicate distinctions. But we can make this assertion: that, from the time of Aquinas, medieval thought on this question moved consistently in one direction, the direction of ever-sharper clarification of the concept on Aristotelian bases, which from the beginning ruled out any possibility of considering the Church as a substance apart from the totality of its members, or of ascribing to it real personality as a legal or political entity.

V. THE THEORY OF THE OFFICE

We have tried to show that medieval political theory was individualistic in the sense that the end of all social groups was service to the ends of individuals. But we must also notice a sharp distinction between the individualism of medieval theory and modern individualism. For in medieval thought it was the common humanity of individuals and not their individuality that was to be fostered by social organization. This meant that the end of political action was an end known by reason, fixed by the very nature of humanity, not subject to dispute. Thus the individualism of medieval politics did not issue in any claim that the individual should be free to determine his own destiny. And even the choice of means to the common end was conceived as primarily a process of ratiocination to which subjective preferences were irrelevant.[53] Thus medieval political theory was given an incorrigibly paternalistic character, and in its premises was completely alien from democratic and liberal tendencies. The tyrant was not defined as the ruler who disregarded his people's wishes, but as the ruler who disregarded their interests.[54] The government appropriate to free men was a government exercised *for* the common good, not a government "by the people."[55] And while there were those who felt that the original freedom of men led logically to the idea that coercive government must be based on consent, the applications of this idea, in the Middle Ages, were limited to assertions that representatives of the

[53] The argument here is based particularly on Aquinas' treatise on law: *Summa Theologica*, *Ia*, *IIae*, qs. 90–97; *v.* in particular q. 94, as. 2, 4; q. 95, as. 2, 3.

[54] Cf., *e. g.*, Aegidius Romanus, *op. cit.*, bk. 3, pt. 2, ch. 6; Occam, *Dialogus*, pt. 3, tr. 1, bk. 2, ch. 6.

[55] Occam, *loc. cit.*

people should be elected, and that the laws of the ruler needed the ultimate confirmation of popular approval for their validity.[56] But neither of these assertions implied a popular right to choose or initiate policy.

Accordingly, medieval theory, though based on natural law, was not based on natural rights in a modern sense.[57] The whole structure of rights was a secondary structure, contingent on usefulness to the common end. It is true that certain rights, such as the right to private property, were regarded as being of such evident usefulness to human ends that they acquired a quasi-natural status, and as such were normally removed from the sphere of governmental control.[58] Or it was possible to argue, as Marsiglio did, that the practical advantages of law-making by those who must in turn obey the law gave the community the right to act as ultimate legislator.[59] But even this argument, exceptional as it was, implied no inherent political right of individuals as such.

Since political rights were not inherent in individuality, it followed that medieval theory lacked the premises of an equalitarian view of such rights. As Troeltsch has elaborately shown,[60] the Church was built on the principle of diversity in degrees of grace, in rank, and in office—a diversity essential to its perfection of order. The doctrine of the Church, Aristotle's emphasis on specialization of function as the essence of "the perfect community," and the actual stratification of medieval society all led to the concept of society as an elaborately articulated structure in which each member had his own appropriate rights and duties, assigned

[56] This idea reaches its highest development in Cusa, *op. cit.*, bk. 2, chs. 14, 33, and *passim*. In the anonymous continuation of Aquinas' *De Regimine Principum*, the concept of original freedom seems to lead to the conclusion that in certain communities, "fit for liberty," the ruler should have no discretion and be a mere administrator of popularly-made laws (*De Regimine Principum*, bk. 2, chs. 8, 9; bk. 3, ch. 20; bk. 4, ch. 1). But this is exceptional.

[57] De Wulf (*op. cit.*, p. 348) speaks of natural rights in medieval theory, and cites Aquinas, *Summa Theologica, Ia, IIae*, q. 94, a. 2. But it is significant of the temper of Aquinas' thought that this list of the precepts of natural law is presented as a list of *ends* appropriate to the nature of man, and in its content is in sharp contrast with the natural rights of seventeenth- and eighteenth-century thought.

[58] Cf., in particular, Aquinas, *Summa Theologica, IIa, IIae*, qs. 57, 66; Occam, *Dialogus*, pt. 3, tr. 2, bk. 2, ch. 23; John of Paris, *op. cit.*, ch. 7. Even the property right was subject to governmental regulation of business transactions, and might be superseded in an emergency by the common utility.

[59] Marsiglio, *op. cit.*, bk. 1, ch. 12, sec. 5.

[60] Troeltsch, *op. cit.*, *passim*, esp. pp. 275–276.

him not for his own sake but for the sake of the well-being of the whole, and thus not necessarily equal to the rights and duties of others; a structure unified and directed to the common end by the supreme control of a single ruler, whose right was similarly based on his usefulness to the common end rather than on his responsiveness to a common will.

Gierke characterizes this idea of an articulation of offices as "an organic construction,"[61] "an energetic expression" of "the thought that human groups are organic," although "it failed to issue in the legal idea of personality—the single personality of the group."[62] But we may inquire whether and in what sense the medieval idea of offices was an organic idea.

In Gierke's dogmatic statement of his own organic social theory, he sharply distinguishes between "the individualistic concept of the representative," in which "one self-sufficient person is represented by another self-sufficient person," and the conception of the organ, appropriate to organic theory. According to this conception,

> just as when the eye sees, or the mouth speaks, or the hand grasps, the man sees and speaks and grasps, so, when the organ functions within its proper competence, the living unity of the whole acts directly. Through the organ, then, the invisible collective person appears as a perceptive, deliberating, willing, and acting unity.[63]

This concept of the organ he appears to find in medieval political theory:

> The idea of a function of the whole body seemed appropriate to every case of social activity, and the member which performs the function appeared as an organ.[64]

None, however, of the quotations with which Gierke supports this statement[65] refers to a function of the whole body, but all refer to functions of the particular officer or officers. In direct contrast to Gierke's interpretation, we have the statement from Aquinas already quoted. In his definition of "unity of order," Aquinas clearly asserts that "the soldier in the army has an operation which is not the operation of the whole army," and contrasts this with the state of affairs in "something one in the absolute sense," in which "the operation of the part is in principle that of the

[61] *Political Theories of the Middle Age*, p. 22. [62] *Ibid.*, pp. 29–30.

[63] *Das Wesen der menschlichen Verbände*, tr. Lewis, *op. cit.*, p. 153; cf. also *Die Grundbegriffe des Staatsrechts*, where Gierke contrasts his theory of the organ with "the private-law concept of the representative, trustee, or attorney" (Lewis, p. 185).

[64] *Political Theories of the Middle Age*, p. 28. [65] *Ibid.*, ns. 92, 93.

whole." Social wholes, according to Aquinas, do have operations which are not the operations of any one of the parts, as "the towing of a boat is an operation of the many who tow the boat."[66] But, obviously, this is simply a collective concept.

In the absence of any evidence for Gierke's interpretation, we may sum up the medieval concept of the relation of the officer to the group in the following principles: first, the decisions and actions of the officer are his own decisions and actions, shaped by his own reason and will, because there is not, nor can there be, any other reason or will which might act through him; second, it is the essence of the officer's rôle that he does on behalf of the community what the community cannot do for itself, and therefore he must act in such a way as to further not his own but the common good.[67]

The usual rôle of the ruler was as remote from the modern idea of a "representative" as it was from Gierke's idea of an "organ." It is true that the ruler was often spoken of as representing the community, but this was simply in the sense that he acted in its name or on its behalf. The modern concept of representation implies that the authority exercised by the representative is delegated to him by the community, that it is his function to carry out a course of action already decided, in very general terms, by the community or a majority of the community, and that he is responsible to the community for fulfilling their mandate. In medieval theory, there was a difference of opinion as to the source of the ruler's authority: all agreed that it was ultimately from God; some saw the community as playing a mediate rôle;[68] others ignored the community and seem to argue that the authority of the ruler was based simply on the rationally demonstrable fact that such author-

[66] Aquinas, *Commentary on Nicomachean Ethics*, bk. 1, *lectio* 1. Gierke's citation of this passage (*Political Theories of the Middle Age*, n. 4) omits the sentences just quoted.

[67] It is important to notice that it is only at this point that there enters into medieval theory the notion of the part as "ordained to" the whole—of the individual as a means to the end of his group. This is true of the individual only in his official or functional capacity.

[68] One source of this idea was the tradition that the authority of the Roman Emperor had been transferred to him by the Roman people; but the mediate rôle of the community could also be argued on purely theoretical grounds; cf., e. g., Marsiglio, *op. cit.*, bk. 1, ch. 15; Cusa, *op. cit.*, bk. 2, chs. 5, 15. The idea that power was mediated by the people might or might not issue in a preference for elective monarchy. On this whole subject, cf. *Political Theories of the Middle Age*, ch. 6, and the references given there; but *v. infra*, n. 70.

ity is necessary to the purposes of the community.[69] But whether or not the ruler was conceived to have received his power from the community, he was not conceived to have received with it any mandate from the will of the community. Rather it was the ruler's function to provide that unity of will which could not be found in the diverse multitude. Norms and limitations for his actions could be found in natural law, and perhaps also in customary law or in general constitutional principles laid down by "the people or its more weighty part," but within the sphere left free by these general norms and limitations, it was his absolute right and duty to decide all questions of policy himself.[70] And accordingly, though it was usually agreed that the people retained the right to disobey those of his ordinances which exceeded the scope of his authority or were manifestly contrary to divine and natural law or the common good[71]—a right which might properly extend to revolution or even to tyrannicide—the criterion for these cases was a supposedly objective standard and not the popular will; and for decisions which did not transgress such objective standards the ruler was responsible to no one. This relationship between ruler and people was, of course, most conspicuous in the case of the Church, where only an extreme thinker like Cusa regarded the papal authority as mediated by the people,[72] and where an important group of thinkers even asserted that only God could judge whether the pope's actions exceeded his proper sphere.[73] Even the

[69] Aquinas, in *De Regimine Principum*, seems to illustrate this point of view. Cf. also his *Summa contra Gentiles*, pt. 3, q. 81. Aegidius Romanus, *op. cit.*, bk. 3, pt. 2, ch. 5, an argument for hereditary vs. elective monarchy, is an excellent example of the way in which such an argument could be carried out entirely in terms of expedience rather than of "rights."

[70] Cf. C. H. McIlwain, *The Growth of Political Thought in the West* (New York, 1932), chs. 6–7, *passim*, for analysis and illustration of this idea. Because the king, in McIlwain's phrase, was "absolute," though not "arbitrary," and because, as McIlwain points out (*ibid.*, p. 390), legislative sovereignty was a concept impossible to medieval thought, Gierke's discussion of "The Idea of Popular Sovereignty" in the chapter cited *supra*, n. 68, seems to me open to grave objections.

[71] Cf. *Political Theories of the Middle Age*, ns. 127–130, for references illustrating this position.

[72] Cusa, *op. cit.*, bk. 2, ch. 34. Occam, *Dialogus*, pt. 3, tr. 1, bk. 4, ch. 1, states the argument that the papal power rests on human ordination, but disposes of it in the following chapters. Marsiglio regarded all coercive jurisdiction of the pope as usurped (*op. cit.*, bk. 2, chs. 4–7, 15–18). Gerson distinguished between the powers given the pope directly by God and those granted by man (*op. cit.*, consid. 10).

[73] Aegidius Romanus, *De Ecclesiastica Potestate* (ed. R. Scholz, Weimar, 1929), bk. 1, ch. 5; Augustinus de Ancona, *Summa de Ecclesiastica Potestate* (Rome, 1479), q. 5; Alvarus Pelagius, *op. cit.*, bk. 1, ch. 6; Turrecremata, *op. cit.*, bk. 2, chs. 93 ff.

conciliarists had no thought of destroying a sphere of authority in which the pope should be absolute, or of holding the pope responsible for all his decisions to an ultimate will of the Church.

So it was with other officers of the community, even those who seemed to represent the community as distinct from the ruler. The church council,[74] the cardinals,[75] the imperial electors,[76] might be conceived to exercise a power delegated by the people; but their decisions were self-initiated, and no mechanism for making them responsible to a popular will was provided.

The position of the officer, then, seems best described by the concept of trusteeship—a trusteeship established and confined by legal principles, but with a sphere of free and irresponsible authority. In brief, the relation of the officer to the community was neither that which Gierke considered appropriate to an organic construction of society nor that which we are accustomed to find in individualistic democratic theory. With the abolition of the idea that the community could judge the legitimacy of the ruler's acts, the medieval idea could lead to the doctrine of the divine right of kings. Or, with the substitution of the majority will for the objective standards of natural law and the common good as the criteria of legitimacy, and with the concurrent development of mechanisms for securing responsibility of the officer to the majority will, the medieval idea could lead to the democratic representative theory. But, since it started with the conception that the community for which the officer acted was simply a multitude of individuals, it could never have led to an organic theory in Gierke's sense.

How, then, are we to interpret the organic analogies so frequently used by the medieval writers? As De Wulf points out, there is no need to assume that any medieval writer meant to imply more than a limited resemblance between the body natural and the body politic.[77] It is perhaps as superfluous to assume an organic conception of the state from such evidence as it would be to assert, on the basis of Cusa's comparison of the ruler to a lute-player, tuning the strings of law so that they should be neither too taut nor too lax,[78] that Cusa had a musical theory of legislation. These

[74] Occam, *Dialogus*, pt. 3, tr. 1, bk. 6, ch. 84; Cusa, *op. cit.*, bk. 2, chs. 8, 13.
[75] Occam, *Dialogus*, pt. 3, tr. 2, bk. 3, chs. 4–13.
[76] Cf. *Political Theories of the Middle Age*, n. 240.
[77] De Wulf, *op. cit.*, p. 355. [78] Cusa, *op. cit.*, bk. 3, ch. 41.

analogies were used to emphasize and illustrate certain principles of organization which their authors believed to be relevant to all cases in which a common end demanded specialization and coördination of activities. Gierke gives a convenient summary of these specific principles of organization;[79] there is no need to see this list as an "energetic expression" of any ideas except those which the writers themselves profess.

VI. THE DIVISION OF AUTHORITY

One principle which was often reënforced and illustrated by use of the organic analogy demands further attention here, namely, the principle that each officer should be given a sphere of autonomy proportionate to his function, and that the coördinating function of the head should not be extended to an interference in functions which properly belonged to others. This principle, as Gierke mentions,[80] was particularly emphasized in combating papal centralization. The argument for the *plenitudo potestatis* of the pope was based essentially on two points: first, an attempt to show that unity could be introduced into multiplicity only by the concentration of *all* authority at a single point, so that all other power in church and state must be a mere delegation from the ultimate authority of the ruler;[81] and secondly, an attempt to show that the supernatural origin of the papal power and the unique position of the pope as vicar of Christ made him, unlike a secular ruler, immune from any earthly judgment as to whether he had overstepped the sphere of his authority.[82] In short, in the doctrine of the *plenitudo potestatis* of the pope, medieval thought anticipated the sixteenth-century theories of the indivisibility of sovereignty and the divine right of kings. Tendencies to attribute a similar *plenitudo potestatis* to secular rulers appeared in the Middle Ages,[83] but did not reach a full development.

Now while the modern attack on monarchic sovereignty and divine right was made by setting up an alternative indivisible and ultimate sovereignty of the people, the medieval attack on the *plenitudo potestatis* of the pope usually proceeded (Marsiglio's

[79] *Political Theories of the Middle Age*, ch. 4. [80] *Ibid.*, p. 28.

[81] Cf. Aegidius Romanus, *De Ecclesiastica Potestate;* Turrecremata, *op. cit.*, bk. 2, chs. 54 ff. [82] Cf. n. 73 *supra.*

[83] The most extreme statement is that of Aeneas Sylvius, *op. cit.*, chs. 16 ff. Cf. Occam's statement and refutation of a similar position in *Dialogus*, pt. 3, tr. 2, bk. 2, chs. 26–28.

thesis was an outstanding exception) by an attempt to show that the ends of the community were best served by maintaining a division of authority among various functionaries in proportion to their functions; that the supreme authority of the pope was an authority limited in scope and compatible with an independent right of the community and other officers; and finally that, like a secular ruler, the pope was subject to the ultimate judgment of the community or other officers when he manifestly violated the ends for which his authority had been given him. Thus Dante, John of Paris, William of Occam, and others continued to reiterate with refined argument the older theory that secular authority had its own sphere of action, not derived from the papal power and normally immune from papal interference;[84] while the conciliarists attacked papal encroachment on the spheres of lower prelates,[85] asserted an original authority of the church council,[86] and claimed an emergency right for the ecclesiastical community represented in the council to judge and depose a pope who had pertinaciously betrayed his special function.[87] That the system of the leading conciliarists was one of divided authority is evidenced by the care with which they still retained a sphere of absolute, though limited, right for the pope.[88]

The concept of the divisibility of authority on which these anti-

[84] Dante, *op. cit.*, bk. 3; John of Paris, *op. cit.;* Occam's position is most conveniently summarized in *De Imperatorum et Pontificum Potestate* (ed. C. K. Brampton, Oxford, 1927).

[85] E.g., Marsiglio, *op. cit.*, bk. 2, ch. 24, secs. 12–13; Cusa, *op. cit.*, bk. 2, chs. 27–28; Gerson, *op. cit.*, consid. 12.

[86] E.g., Cusa, *op. cit.*, bk. 2, ch. 8; Gerson, *op. cit.*, consids. 1, 11, and concl. 2; Gerson, *Sermo Factus XXI Die Julii, 1415* (*Opera*, vol. II, pp. 274 ff.), pt. 3, *directio* 2; Pierre d'Ailly, *Tractatus de Ecclesiae, Concilii Generalis, Romani Pontificis, et Cardinalium Auctoritate* (Gerson, *Opera*, vol. II, pp. 925 ff.), pt. 3, ch. 1; pt. 4, ch. 3.

[87] E.g., Franciscus de Zabarellis, *De Schismatibus Authoritate Imperatoris Tollendis* (Schard, *De Jurisdictione . . .* , Basel, 1566, pp. 688 ff.); Gerson, *De Unitate Ecclesiae* (*Opera*, vol. II, pp. 114 ff.), pt. 2, consids. 1, 2; Gerson, *De Auferibilitate Papae* (*Opera*, vol. II, pp. 209 ff.), consid. 10; Gerson, *Considerationes de Reformatione et Pace Ecclesiae* (*Opera*, vol. II, pp. 69 ff.), consids. 1, 2; Pierre d'Ailly, *op. cit.*, pt. 3, ch. 4.

[88] Cf., esp., Gerson, *Sermo Factus XXI Die Julii, 1415*, pt. 3, *directio* 2; Pierre d'Ailly, *op. cit.*, pt. 2, ch. 1. Cf. also Gierke's analyses of conciliar theories, in *Political Theories of the Middle Age*, esp. ns. 190, 196, 198, 203. These references, it seems to me, do not justify his assertion that the conciliarists believed in "a full sovereignty of the council" or "popular sovereignty within the Church" (*ibid.*, pp. 54, 57).

papal arguments were based was a concept already deeply imbedded in secular theory. It appeared in the right and duty of magistrates to nullify unjust laws, in the right of the Estates to grant taxes and consent to innovations in customary law; in the right of subjects to their property, in the full medieval sense of the word; in the medieval echoes of the classical idea of mixed monarchy;[89] and in the theoretical reflections of the system of rights in a feudal hierarchy.[90] It was a natural corollary of the basic medieval concepts of specialization of function, the supremacy of law, and the "absolute, but not arbitrary," position of the ruler.

VII. FEDERALISM AND WORLD UNITY

I have emphasized this doctrine of the relation of officers to one another partly because it seems to me one of the most basic and characteristic of medieval political ideas, and partly because I believe that this was the doctrine which Gierke erroneously interpreted as federalistic.

Before proceeding to Gierke's interpretation of medieval federalistic theory, certain preliminary points should be noticed. First, among the officers of the state might appear collegial bodies—for instance, an aristocratic council. And these bodies, as officers of the whole, were often given an autonomy proportioned to their function. This, however, is not a federalistic idea. Secondly, while, as Gierke recognizes, many medieval writers (with "antique-modern" tendencies) construed their *civitas* or *regnum* as a unitary state, others, particularly in dealing with the Empire, recognized the desirability of having subordinate regional units whose governments should be given a certain amount of autonomy.[91] And the organization of the Church was, of course, a regional federalism. Finally, the influence of Aristotle certainly brought into medieval thought the habit of speaking in terms of an hierarchy of communities—the household, the village, the city, and, perhaps, the province, kingdom, or empire set above these as more inclusive communities. Many references to this hierarchy are concerned

[89] In asserting (*ibid.*, p. 45) that in these cases sovereignty belonged to the union of ruler and community, Gierke seems again to be reading a modern idea, not justified by his references (n. 165), into the medieval texts.

[90] E.g., *Richardi Armachani De Pauperie Salvatoris* (*Johannis Wycliffe De Dominio Divino*, ed. R. L. Poole, London, 1890), bk. 1, ch. 2. On this whole subject of sovereignty and a hierarchy of *dominia*, cf. McIlwain, *op. cit.*, chs. 6, 7, *passim*.

[91] E.g., Dante, *op. cit.*, bk. 1, ch. 14; Cusa, *op. cit.*, bk. 3, ch. 32.

simply with household and village as stages in the development of the *civitas* or as an hierarchy of degrees of perfection.[92] Others cite these various bodies as evidence of the universal principle of ordination to one head.[93] Yet, in several instances, it is clear that the larger community was conceived as, in some sense, embracing the smaller, whether by simple political inclusion or by including and perfecting its end.[94]

But was there, among medieval writers, any tendency to a construction of society by an hierarchy of ever more inclusive groups, distinguished clearly in purpose, in which each group was given a degree of autonomy proportioned to its unique end as a social whole? Gierke asserts such a tendency;[95] but of the references which he cites in this connection,[96] most have no bearing on the point. Some are mere listings of more or less inclusive groups, such as we have just discussed, with no reference to their constitutional articulation. Two passages from Aquinas bear only on the relation between group and individual,[97] and a passage from Cusa clearly deals with the autonomy of offices.[98] Of all these writers, Dante is the only one who discusses *both* the specific ends of groups *and* the federal construction of the whole.[99]

I have already pointed out that the specific ends which Dante assigned to partial groups were not considered as ends apart from the ends of individuals, but as so many kinds or degrees of service to individual ends; and that in this Dante was in agreement with

[92] Of the references that Gierke lists in connection with medieval federalism (*Political Theories of the Middle Age*, ns. 62–64), two are in this category: Aquinas, *De Regimine Principum*, bk. 1, ch. 1; Aegidius Romanus, *De Regimine Principum*, bk. 2, pt. 1, ch. 2. I have not been able to secure Engelbert of Admont, *De Regimine Principum*, to which Gierke also refers. Cf. also Marsiglio, *op. cit.*, bk. 1, ck. 3, and John of Paris, *op. cit.*, ch. 1, to which Gierke does not refer.

[93] Of Gierke's references, Dante, *op. cit.*, bk. 1, ch. 5; Antonius Rosellinus, *op. cit.*, bk. 2, ch. 6; Augustinus de Ancona, *op. cit.*, q. 1, a. 6, are in this category. Occam, *Dialogus*, pt. 3, tr. 1, bk. 2, chs. 3–5, is also an analysis of types of organization.

[94] Engelbert of Admont, *De Ortu et Fine Romani Imperii*, chs. 7, 12, 15, 17, 18, cited by Gierke, falls in this class. Cf. also Aquinas, *Commentary on the Politics of Aristotle* (*Opera*, Parma ed., vol. XXI), bk. 1, *lectio* 1; Aegidius Romanus, *De Regimine Principum*, bk. 3, pt. 1, ch. 1.

[95] *Political Theories of the Middle Age*, pp. 9–10, 20–21; *Althusius*, pp. 226–227.

[96] *Political Theories of the Middle Age*, ns. 4, 62–64; the references in *Althusius* are the same.

[97] *Ibid.*, n. 4; discussed *supra*.

[98] Cusa, *op. cit.*, bk. 2, chs. 27–28; discussed *supra*.

[99] Dante, *op. cit.*, bk. 1, chs. 3, 5, 14.

everyone else who touched on the subject. One may also notice that Dante was typical in making no sharp distinctions between the ends of various groups. The end of the household is "to prepare its members for living well"; the end of the village, "the due protection of persons and property"; the end of the city, "the good and sufficient life"; the end of the kingdom, "the same as that of the city, with greater security of tranquillity"; the end of the whole human race, which Dante wished to see organized as an empire, "the actuation of the whole potency of human reason," through the provision of universal peace.[100] It is not surprising, therefore, that when Dante came to discuss the federal structure of his universal empire, he made no use of this list of communities with special ends. Rather he said:

> Nations, kingdoms, and cities have their own peculiar conditions, which must be regulated by different laws. . . . Obviously it is fitting that the Scythians, who live beyond the seventh clime, and, suffering great inequality of days and nights, are oppressed by a degree of cold almost intolerable, should be regulated otherwise than the Garamantes, who, dwelling under the equinox and having the light of day almost equal to the shades of night, can not endure too much clothing on account of the heat of the air. It should be understood . . . that in respect of its common affairs which concern all, mankind is ruled by one man, and by a common rule is governed to peace. And this rule, or law, particular princes ought to receive from him, even as the practical intellect receives the major premise for a particular conclusion from the speculative intellect, and adds to it the minor premise which is properly its own, and draws a particular conclusion for the practical affair.[101]

In short, the autonomy here described is the autonomy, not of a community as such, but of an officer; and it is proportioned, not to a special end of the community, but to its particular circumstances.

It is not unreasonable to imagine—though we have no evidence on the subject—that some medieval thinkers might have granted a degree of autonomy to the family, the village, or the city; but to assume, without evidence, that this autonomy would have been based on the unique ends of these groups as such, seems to me too

[100] *Ibid.*, bk. 1, chs. 3–5. For similarly vague differentia, see Aquinas, *Commentary on Nicomachean Ethics*, bk. 1, *lectio* 1; Aquinas, *De Regimine Principum*, bk. 1, ch. 1; Aegidius Romanus, *De Regimine Principum*, bk. 3, pt. 1, ch. 1; bk. 3, pt. 2, ch. 32. Engelbert of Admont, *loc. cit.*, does not differentiate at all except quantitatively.

[101] Dante, *op. cit.*, bk. 1, ch. 14. Cf. similar statements in Antonius Rosellinus, *op. cit.*, bk. 2, ch. 7; Engelbert of Admont, *op. cit.*, ch. 18.

bold an assumption. One is forced to the conclusion, then, that what federalism there was in medieval political theory—where it did not rest on traditional legal rights—probably rested, as Dante's did, on an adjustment of the common end to considerations of expedience. It follows that there was no *fundamental* conflict between the medieval proponents of federalism and the proponents of the "antique-modern" centralized state: since all medieval thinkers agreed in constructing the state directly from individuals, and then arranging the parts of the state in accordance with what they variously judged to be practically useful to the common end.

One may add that the question of the unification of the world in one empire was also conceived, to a large extent, as a practical question of expedience. The arguments on which the theory of universal empire was based fall into four groups: the historical and legal arguments (for instance, those based on the supposed transfer of the Roman Empire); the arguments which proceeded from a general belief in unity of rule as a principle of order illustrated elsewhere in the universe; the arguments which proceeded from the belief that the organization of the secular side of life should parallel the divinely-instituted, and thus evidently most perfect, organization of the religious side; and the arguments based on the common purpose of mankind.[102] With the historical and legal arguments we are not here concerned. The opposition to the other three sets of arguments sprang, not from a difference in premises, but from a difference of opinion in regard to questions of practical expedience. Thus Occam showed that in practice world-monarchy might fail to achieve order, since it might easily result in continual conflict between the world-emperor and subordinate peoples or rulers.[103] John of Paris showed that the desirability of unity under a secular monarch could not be argued from the perfection of the Church, because of the diversity of men in physical traits as contrasted with their essential similarity in spiritual traits, and because the secular sword can not in practice reach so far as the spiritual sword, since the one is manual, the other verbal.[104] And certainly, among all those who denied, explicitly or by implication, the desirability of a world-state, there was none who would have denied the com-

[102] Cf. Occam, *Dialogus*, pt. 3, tr. 2, bk. 1, chs. 1–13, for an exhaustive examination of the arguments in favor of world-monarchy.

[103] *Ibid.*, pt. 3, tr. 2, bk. 1, chs. 6, 7.

[104] John of Paris, *op. cit.*, ch. 3. Cf. Gerson, *De Potestate Ecclesiastica*, consid. 9.

mon end of mankind. The question at issue between Dante and his opponents was really whether the smaller unit was adequate to provide the degree of security and tranquillity necessary to the fulfilment of the common end, and whether it would be feasible to organize a world-state in such a way as to meet the practical difficulties caused by regional differences in physical conditions, language, and customs, and the difficulty of maintaining effective control over so large a territory. It was to this problem that the federalistic proposals of Dante, Antonius Rosellinus, and Engelbert of Admont were addressed.

VIII. CONCLUSION

The interpretation of the medieval conception of social groups presented in this paper differs widely from Gierke's interpretation. Instead of the two opposing tendencies of antique-modern and properly medieval thought which Gierke described, we have discovered only one fundamental tendency, on which all thinkers were in general agreement: a tendency to conceive all political units, including the Church, as organizations of individuals aiming at the ethical and spiritual fulfilment of individual human destiny, and having no purpose apart from the common end of their individual members. These organizations were conceived as having no intrinsic unity; the unity which they had was, on the one hand, the unity of certain ideal forms which, by nature or supernatural grace, were common to all the individual members; and, on the other hand, a unity of order achieved through the division of labor for the common good and the coördination of all activities to this end by the ruler. Starting from such premises, a conception of the group as an organic whole with a real personality could never have been attained; nor were there any tendencies in this direction.

In regard to this fundamental conception, the only differences to be noted in medieval theorists were differences in clarity of definition. And while clear definitions are rare, there is no instance of a thinker holding the views which Gierke described as "properly medieval." Conflict in medieval political thought was conflict over the best kind of organization—the best location of powers—in a society whose nature and ultimate purposes were not open to question. Here we can find an antithesis between two tendencies: the tendency to conceive authority as divided among a variety of officers, and the tendency to conceive authority as necessarily con-

centrated in some single sovereign. The tendency to regional federalism which Gierke found in medieval political theory was one aspect of this conflict; but our interpretation differs from Gierke's in asserting that the question at issue was not the autonomy of a group with a special purpose to be fulfilled, but the autonomy of an officer with special functions to perform in the interests of the general purpose of mankind.

If we are correct in our interpretation of the basic concepts of medieval political theory, is such a theory properly called organic? The question is one of terminology; and on the proper use of this slippery word there is no general agreement. To me, medieval political theory conspicuously illustrates the dangers of assuming a clear-cut antithesis between individualistic and organic theories. If by an organic theory we mean a theory which emphasizes the harmony between the individual and organized society; which sees political organization not as merely restrictive but as positively necessary to the fulfilment of human nature; which visualizes social bonds as deeply rooted in human need, and not in a mere revocable and deliberate contract; which derives all political rights not from individual rights but from common purposes; which, from objective considerations of utility, is led to approve an inequality of political rights and the existence of spheres of absolute and irresponsible authority—then medieval political theory was organic. But if by an organic theory we mean a theory which conceives that the whole has a purpose distinct from and superior to the ends of individuals; which construes the whole as an hierarchy of partial groups each with its special end and with a right as a group to realize that end; which posits an intrinsic unity of each group like the unity of the human individual; which views the officers of the group as organs through which the unity of the whole expresses itself—then medieval political theory was not organic.

ORGANIZATION FOR INTERNAL CONTROL AND COÖRDINATION IN THE UNITED STATES ARMY

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Woodrow Wilson long ago recognized the value of the comparative approach in studying public administrative processes.[1] Moreover, in recent years the recognized scope within which fruitful comparisons may be made has been considerably broadened, and public administration has benefited from studies of the experience of large-scale industrial, commercial, and other enterprises.[2] Thus far, however, relatively little attention has been paid by students of public administration to the administrative experience of armies.[3] Military organizations have long dealt with the problem of combining men and materials to produce coördinated and effective action. Out of centuries of experience have emerged certain doctrines, forms, and methods concerning control and coördination which are recognized and accepted by all modern armies. Details and applications change rapidly, but these basic concepts, which have virtually achieved the dignity of principles in their own sphere, change slowly, if at all.

Several aspects of this extensive store of military doctrine and experience are of particular interest to students of public administration. Of foremost interest are the staff agencies with which military organizations coördinate and focus the details necessary for

[1] " . . . nowhere else in the whole field of politics, it would seem, can we make use of the historical, comparative method more safely than in this province of administration." Woodrow Wilson, "The Study of Administration," *Political Science Quarterly*, vol. 2, p. 219 (1887).

[2] Cf. L. Gulick and L. Urwick (eds.), *Papers on the Science of Administration* (New York, 1937). A study of the common problems of bureaucracy in government and large commercial enterprises is now being made by Professor Marshall E. Dimock,.

[3] One reason for the relative lack of attention shown to military experience by students of public administration has doubtless been the scarcity of available and usable information about military methods and doctrines. The present article, which is based chiefly upon information gathered by the author at Washington, D.C., Ft. Benning, Georgia, and Ft. Leavenworth, Kansas, in 1935 and 1936 while holding a pre-doctoral field fellowship granted by the Social Science Research Council, provides an analysis of the structural or organizational aspects of internal control and coördination in the United States Army, and suggests certain applications of military experience to the problems of public administration.

the making of effective decisions of major policy by the hierarchical, or line, leaders. Much can be learned about the characteristics and possibilities of staff services from an examination of military methods. The distinction made in American military usage between general staff and special staff services, which is explained later in this article, is, for example, a useful and important one which might well be adopted by public administration.

Military experience also enlightens the problem of securing effective hierarchical organization. Stringent limitation of the number of subordinates to be personally directed by any one individual is a notable characteristic of military organization, as is also an insistence upon easily located lines of responsibility. According to avowed doctrines, staff services are not permitted to infringe in any manner upon line responsibilities.

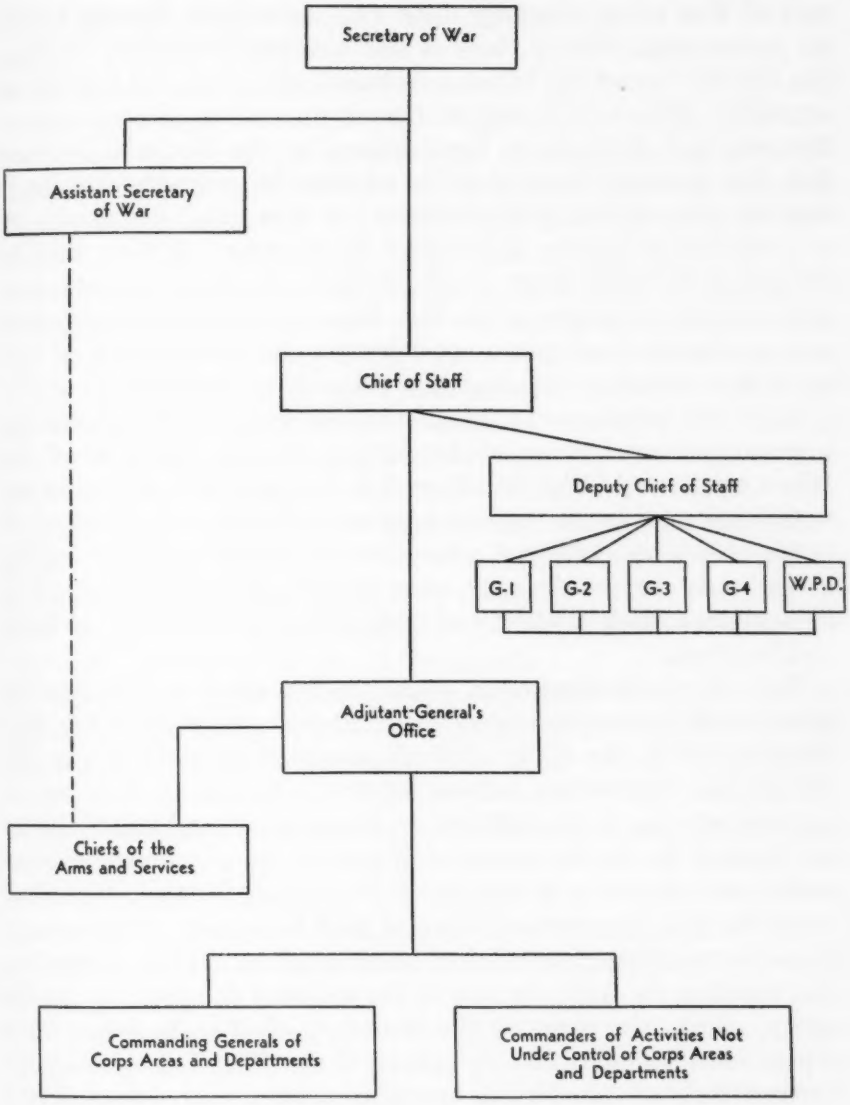
Functional differentiation is highly developed in modern military activity, and the response of military organizations to the problem created by this development is not without significance for public administration. This is particularly true of the relationship evolved in military practice between technical experts and line authorities.

In the United States Army, the organization of internal control and coördination is built upon three main foundations, namely, (1) hierarchical structure, (2) functional organization, and (3) staff services. In order to examine those aspects of military doctrine and procedure which seem most pertinent to public administration, an inspection may be made of these three sources of control and coördination.

I. HIERARCHICAL STRUCTURE

Hierarchy connotes the arrangement of authority or command in graduated scales or levels in such a fashion that policies and plans flow down through well-defined channels from the top to the bottom of the organization. In tracing the hierarchical structure of the Army, it will be necessary to indicate the channels through which command is exercised. This will involve first an examination of the lines of authority in the War Department at Washington, and then an outline of the principal subordinate units of military organization, together with the relationship of their commanders to the War Department and to each other.

The diagram shows the main elements in the organization of the War Department level of the Army. Above the Secretary of War,



of course, is the President, whose constitutional position is that of commander-in-chief of the Army.[4] The Secretary of War, as the agent of the President, controls all the activities of the Army.

In the performance of his specifically military duties, the Secre-

[4] Art. II, sec. 2.

tary of War relies primarily upon two individuals directly under his jurisdiction. One of these is the Assistant Secretary of War. He, like the Secretary, is not a technical specialist, but a political appointee subject to change with each succeeding administration. His principal duties have been defined by the National Defense Act. It is provided there that "in addition to such other duties as may be assigned him by the Secretary of War, the Assistant Secretary of War, under the direction of the Secretary of War, shall be charged with supervision of the procurement of all military supplies and other business of the War Department pertaining thereto and assurance of adequate provision for the mobilization of material and industrial organizations essential to war-time needs."[5]

Thus, the activities of the Assistant Secretary of War constitute a very specialized phase of the current military functions of the War Department. This is reflected in the existence of a separate organization under the Assistant Secretary for the accomplishment of his objectives, although whenever his duties require it he has access to, or may confer with, other sections and offices of the War Department, such as the purchasing offices of the chiefs of Arms and Services.

The other individual upon whom the Secretary of War directly relies for the accomplishment of the military objectives of the War Department is the Chief of Staff. Army regulations make this official the "immediate adviser of the Secretary of War on all matters relating to the military establishment," and state that he is "charged by the Secretary of War with the planning, development, and execution of the Army Program." Further, "he shall cause the War Department General Staff to prepare the necessary plans for recruiting, mobilizing, organizing, supplying, equipping, and training the Army for use in the national defense. . . . As the agent, and in the name of the Secretary of War, he issues such orders as will insure that the plans of the War Department are harmoniously executed by all branches and agencies of the military establishment, and that the Army program is carried out speedily and effectively."[6]

The Chief of Staff is a professional soldier, and his post is the highest in the War Department to which an Army officer can nor-

[5] Sec. 5a, as amended by act of June 4, 1920. 41 *Stat. at Large* 764.
[6] *Army Regulations*, No. 10–15, sec. 2.

mally advance. Unfortunately, the title of the office is somewhat confusing to the student of Army line and staff relationships, for in the Army true general staff officers do not possess power and authority in their own right. The Chief of Staff of the War Department, however, has actual legal authority of the greatest weight in regard to all military matters. That is to say, he has in practice, and according to Army regulations, direct command functions. "The Chief of Staff, in addition to his duties as such, is, in peace, by direction of the President, the Commanding General of the Field Forces and in that capacity directs the field operations and the general training of the several armies, of the overseas forces, and of the G.H.Q. units. He continues to exercise command of the Field Forces after the outbreak of war until such time as the President shall have specifically designated a commanding general thereof."[7] Moreover, the Chief of Staff has under him the Deputy Chief of Staff, a true general staff officer, who assists him and is "charged with supervision over the activities of all the divisions of the War Department General Staff."[8] Thus, the Chief of Staff is rightly to be regarded as standing at the apex of the professional military hierarchy of the Army.

The powers of the Chief of Staff are exercised over all the elements of the Army, except the War Department General Staff, through the Adjutant-General's Office as an agency of transmittal but not of command. The Adjutant-General's Office is the official channel of communication between all the components and agencies of the Army. It is the department of records, orders, and correspondence of the Army. The office has no command functions, but is rather, in legal terminology, the notary that authenticates all orders, instructions, documents, and publications affecting the Army at large.

All of the business of the office of the Adjutant-General is performed in accordance with general policies laid down by the War Department, under the immediate direction of the Chief of Staff. If a matter which comes up for consideration by the Adjutant-General's Office can be handled in line with some existing War Department policy, it is handled accordingly. If no appropriate policy of general application exists, the Adjutant-General's Office refers the matter to the proper agency of the War Department for

[7] *Ibid.*, sec. 1 (changes, Aug. 18, 1936). [8] *Ibid.*, sec. 2.

the enunciation of such policy.[9] Thus, while the Adjutant-General's Office may be recognized in a sense as having a position in the hierarchical structure of the Army, there are definitely no command functions attached to it.[10]

In peace-time, the main lines of hierarchical control run from the office of the Adjutant-General to the commanders of corps areas and departments. The National Defense Act provides: "For purposes of administration, training, and tactical control, the continental area of the United States shall be divided on a basis of military population into corps areas."[11] Accordingly, nine corps areas have been established. Overseas possessions of the United States have similarly been divided by presidential direction into regional units known as departments.[12]

The commanders of these corps areas and departments have, in time of peace, direct and complete authority over all of the military personnel and establishments of the Army within their territorial jurisdictions with the exception of the General Headquarters Air Force, the advanced officer training schools for general staff and high command positions, and the Military Academy at West Point, which are under immediate War Department supervision, and certain activities and agencies which are placed under the authority of the chiefs of the Arms and Services of the War Department in order to facilitate their specialized functional activities. Thus, the schools which provide officers and enlisted men with advanced specialized training in the techniques of the various Arms and Services are, in their purely instructional aspects, and aside from matters of discipline, internal supply, etc., directly under the jurisdiction of the appropriate chiefs of branches. Also, a considerable number of technically specialized activities, such as hospitals, construction projects, and arsenals fall under the authority of the chiefs of the Arms and Services.

[9] *Army Regulations*, No. 15–5, sec. 5.

[10] There are certain officers in the War Department known as the chiefs of the Arms and the Services. Their position in the organization of the Army, and their contributions to the process of internal control and coördination, will be considered more fully below in connection with the discussions of functional organization and staff services. So far as here concerns hierarchical structure, however, it may be said that these officers do not form links in the principal chain of command by which the Army is governed. Instead, they render specialized services of various sorts to line officers and to general staff officers. They are known collectively as the "special staff" of the War Department.

[11] Sec. 3, as amended by act of June 4, 1920. 41 *Stat. at Large* 759.

[12] *Army Regulations*, No. 170-10, sec. 2.

Within the corps areas and departments, control is, with such exceptions as have been noted, exercised by the commanders through the long series of tactical and tactical-administrative units into which the Army is divided. The composition, activities, and even the names, of these units are to some extent standardized in all modern armies. In the United States Army, the larger of these units are not in full strength existence in peace-time, but they are provided for in plans and in officer-training activities.

In order that a general understanding may be secured of the hierarchical structure of the Army, it may be well to begin at the bottom and list and describe the typical units of military organization[13] in an ascending scale. Exact figures as to the composition of all of these units cannot be given, because most of them, above the very lowest, vary from time to time. Hence the figures given here are only approximations which represent possible and typical situations, and are intended only to facilitate an understanding of the nature of these units.

The smallest infantry group is the squad, which consists of eight men, including the corporal, who is in charge of the unit. The next larger unit, the section, is composed of three squads under the command of a sergeant. Above, and including these two units, is the platoon, composed of two sections and commanded by a lieutenant. This may be regarded as the lowest tactical unit of organization.

From this point upward, there is a regular alternation between groupings which are primarily tactical in purpose and those which also have important administrative, maintenance, and supply functions. This procedure is intended to promote greater mobility and freedom of operation of certain units, and may be noted in passing as an interesting and significant aspect of military organization.

The next grouping above the platoon has not only tactical functions, but administrative ones as well. This is the company, which is composed of three platoons, and is commanded by a captain. Next above the company comes the battalion, consisting of some three or four companies under the command of a major or lieutenant-colonel. This is a tactical unit. The next more inclusive group is the regiment, an organization formed of approximately three battalions, and commanded by a colonel. This group is both administrative and tactical. Above it comes the brigade, which again

[13] Infantry terminology will be employed in naming the lower units.

is primarily a tactical unit of organization. A brigade may be composed of two regiments and is under the command of a brigadier-general.

Continuing up the scale, the following unit is the division, which is the basic large unit of organization. It has both tactical and administrative functions, and is the smallest unit which contains the essential arms and administrative services so arranged as to make it a relatively self-sustaining unit. It consists of some three brigades plus numerous special types of personnel. Its commander is a major-general. Still higher is the corps which is primarily a tactical unit and has very few administrative duties. This may consist of three divisions commanded by a lieutenant-general. Above the corps is the army. An army may be composed of three corps and is commanded by a general. The functions of the army are both administrative and tactical.[14] Two or more armies may be organized together as a group of armies under a single commander. This commander has responsibilities of a strategical character, rather than administrative. Above the commanders of several groups of armies may be established the commander-in-chief of the theater of operations. While the functions of this officer are largely of a strategical character, he has many important administrative and territorial responsibilities.[15]

War-time organization calls into existence the entire series of units described. It maintains the corps areas and departments as units of internal administration and as defense areas of the zone of the interior. The commanders of these regions, of course, control all of the units assigned to their areas, but the main line of hierarchical control runs from the War Department to the commander-in-chief of the theater of operations, and from him in sequence to the commanders of groups of armies, armies, corps,

[14] For purposes of national defense planning, a skeleton organization of four armies was created in 1934 by No. 160–10 of *Army Regulations*.

[15] For information about the hierarchical units of command, see *Army Regulations*, No. 600–620; *The Work of the War Department* (Washington: Government Printing Office, 1924), pp. 37–38; *Manual for Commanders of Large Units (Tentative)*, II, *Organization and Administration* (Ft. Leavenworth, Kansas: The Command and General Staff School Press, 1935), pp. 9–19; *Organization of the Army*, Special Text No. 227, Army Extension Courses (Washington: Government Printing Office, 1932), pp. 11–14; *Military Organization of the United States* (Ft. Leavenworth, Kansas: The General Service Schools Press, 1928), pp. 22–31; *A Manual for Commanders of Large Units (Provisional)*, I, *Operations* (Washington: Government Printing Office, 1930), pp. 1–51.

divisions, brigades, regiments, battalions, companies, platoons, sections, and squads.

A statement of the underlying ideas on which this herarchical system is built may be taken from a military publication. "The commander of an organization or unit is thus its controlling head. He is responsible to his proper superior for results—for everything his command does or fails to do, collectively and individually. It follows, therefore, that the commander of an organization must make his authority felt and cause his will to be obeyed by each individual member of the organization. But experience has proved beyond question that the number of subordinates which a single individual can personally supervise and control is extremely limited, varying with conditions. How, then, is it possible, as organizations or units increase in size up through the scale of military hierarchy to the army or group of armies, for the commander—this single controlling head—to direct effectively the individuals composing his command and cause his will to be obeyed and executed by each individual? It is manifestly impossible for him to do this by personal supervision over, and direct orders to, each individual. There must be some kind of mechanical framework by means of which the commander, dealing directly with only a few subordinates, can accomplish the desired results.

"This mechanical framework is known as organization, i.e., subdivision into successive subordinate groups, each under its own commander. . . . The succession of subordinate commanders through whom a commander exercises his authority and control is known as the *chain of command*."[16]

From this statement, and from the structural description already given, may be seen the three principal characteristics of the hierarchical control of the Army. First of all is the grant of complete authority to each commanding officer over the unit assigned to him. Except for orders coming to him from his hierarchical superior, no limitation is made on that authority. Divided authority and conflicting orders are regarded as fatal to effective military action.

The second characteristic, complementary to the first, is the placing of full responsibility on each commanding officer for everything that occurs within his unit. The commanding officer shoulders

[16] "The Division Commander and His General Staff," *Command, Staff, and Logistics* (Ft. Leavenworth, Kansas, 1934), pp. 1–2.

responsibility for each and every individual under him, and for all of their actions or omissions of action. Divided responsibility, as well as divided authority, is considered a ruinous flaw in the military hierarchy.

Finally, the face-to-face personal contacts of the members of the hierarchy are drastically limited. The effective span of control[17] of a commanding officer is considered to range from two or three to approximately eight individuals. In general, it may be said that the more complex and extensive the duties of a commanding officer become, the fewer are supposed to be the subordinates he personally directs.

The usefulness for the purpose of internal control and coördination of the type of hierarchical structure devised by the Army is, within its own frame of reference, not easily denied. Although technical problems are sometimes complex, the objectives are precisely defined, and extreme promptness, decisiveness, and dependability of action are the prime needs of military organizations. Hence, the simple and powerful lines of control, the perfect correlation between responsibility and authority, and the restricted personal contacts (particularly on the higher and the more complex levels) are indispensable.

In other spheres of organized group action than the military, and particularly in the civil administrative services of government, the social and administrative situations frequently require a somewhat different hierarchy of control. For example, when social goals do not lend themselves to rigid delimitation, it is desirable to permit both discretion and joint responsibility to play important rôles. Also, in the supervision of routine and simple activity the effective span of control may be widened.

However, to the extent that objectives are more or less clearly defined, and so far as promptness, decisiveness, and dependability of action are considered important, the forms of hierarchical control which are employed by the Army are applicable in other types of organized group action. There is nothing peculiarly military about giving full power over this field to a directing official, and then holding him completely responsible for results; nor is the limitation of personal supervisory contacts possible only in the

[17] Cf. J. M. Gaus, "A Theory of Organization in Public Administration," *The Frontiers of Public Administration* (Chicago, 1936), p. 75.

Army. Military organization is peculiar and noteworthy only because of the degree to which it has carried these processes.

II. FUNCTIONAL ORGANIZATION

The Army is divided into functional groups, and all members of the organization below the level of brigadier-general of the line are assigned to one or another of them. The hierarchical units which have already been examined are, above the lower units, composed of various combinations of these functional components.

Certain of these functional groupings of the Army are designated as the "arms" or "combatant" branches. These are the Infantry, Cavalry, Field Artillery, Coast Artillery Corps, Air Corps, Corps of Engineers, and Signal Corps. The primary functions of these groups have to do with direct combatant operations. The remainder of the functional groups are known as the "services" and include the Inspector-General's Department, Judge-Advocate-General's Department, Finance Department, Chaplains, Quartermaster Corps, Medical Department, Ordnance Department, and Chemical Warfare Service. The personnel of the Adjutant-General's Office is also regarded as belonging to a separate service. The services have been defined as "such supply, technical, and administrative agencies as are specially designed to maintain the fighting efficiency and morale of the combat elements of a command."[18]

The main basis of control in the Army is unquestionably the hierarchy or chain of command. All orders must clear through it, and all the members of a given hierarchical unit (whatever may be their individual functional duties) receive their instructions from their unit commander. However, there exists in addition to the chain of command another, but distinctly subordinate, line of contacts which conforms to the functional rather than the hierarchical divisions of the Army. This permits a direct flow upward and downward of consultation and coöperation between technical and administrative specialists without destroying the authority and responsibility of the chain of command.

Under each commander of the major hierarchical units are placed special officers whose duty it is to supervise the technical and administrative activities of the various functional specialties represented in the unit. Thus the services, such as the Quarter-

[18] *Organization and Administration*, p. 21.

master Corps and the medical services, are supervised throughout the unit by their chief officers. Some of the arms, or combatant, branches have many specialized functions of supply and administration, such as the Air Corps and the Corps of Engineers; and these, too, are supervised by special officers. Even the arms which do not involve any very extensive administrative functions, such as Infantry, are supervised, as to certain technical aspects, by special officers. These supervising officers form collectively what is known as the special, or technical and administrative, staff, and at the War Department level are known as the Chiefs of Arms and Services.

The supervision exercised by these officers does not extend to the actual command of the personnel assigned to each of their functional specialties. That privilege is held only by the hierarchy or chain of command. The functions of these technical and administrative staff officers, and the relationship between the chain of command and what might be termed the chain of functional contacts have been described as follows: "There is but one channel of command. It is followed in all cases. However, after policies and basic plans are decided and promulgated, many details are worked out by conference between the chiefs of the technical and administrative staff sections and the corresponding chiefs of lower units. Notwithstanding this, when orders are issued they pass through the prescribed channels. The principle is that, in technical details or in details affecting the routine of a particular branch, or as regards the details of an approved and promulgated technical plan or project, the chiefs of technical and administrative staff sections confer directly with the corresponding chief of the next lower unit. The chiefs of the higher units advise and assist the chiefs of the lower units."[19]

The advantage of this type of functional organization for the Army is that it permits a considerable degree of functional coöperation without infringing on the authority and responsibility of the commanders of the various tactical and tactical-administrative units which are necessary for the performance of the ultimate duties of the Army. For non-military forms of organized group action, this scheme of relating (but subordinating) functional to hierarchical lines of control offers a means of relating the "over-

[19] *Military Organization of the United States*, p. 44.

head" administrative staff services of the headquarters to the similar services of regional centers of administration without weakening the main lines of departmental or hierarchical control. If unified centers of regional administration are ever to be established by the federal government of the United States, the organizers of those centers would do well to consider the experience of the Army with the problem of functional organization, and particularly with respect to the organization of technical and administrative staff services.

The danger of the Army's system of functional organization and control lies in its tendency to violate (as the Army's hierarchical organization does not) the limits of the effective span of control. As the size of units increases up the scale of the hierarchy, the number of technical specialties (and hence technical and administrative staff officers) tends also to increase. Despite the rigorous limit on the number of hierarchical officers a commander must deal with, he may soon be swamped by the number of his technical advisers. The efforts which are made to avoid this result will be considered in connection with the staff services.

III. STAFF SERVICES

Staff services are made necessary by overwhelming responsibilities placed upon officials within the hierarchy of authority. That such responsibilities are found on all except the lower levels of the military hierarchy cannot be doubted. The commanders of the higher units of organization are responsible for leading and inspiring the actions of thousands of men. They are heavily burdened by the sheer mechanics of issuing orders and seeing that the orders are correctly obeyed. They must direct and coördinate a number of technical and specialized fields of activity. The commanders are, moreover, responsible for tactical and strategical decisions involving an estimate of the total situation and a determination of proper courses of action within their prescribed objectives. These burdens of command are overwhelming. They make it imperative that commanders have special assistance. To quote from a military publication: "In this grouping of units under one command, a point is soon reached in the ascending scale where the multiplicity of details devolving upon the commander are too numerous to be handled in person and leave time for consideration of broader phases of command, such as the determination and execution of plans and poli-

cies and the supervision of operations. Beginning at this point, each unit is provided with an appropriate staff. By the term staff is meant the personnel who help the commander in the exercise of the functions of command by professional aid and assistance."[20]

In the United States Army, there are three types of staff services. The personal staff consists of a small group of *aides-de-camp* who are "officers attached to the person of the commander to assist him in various duties which vary with the personality of the commander."[21] "The functions of these officers vary widely from case to case, and may occasionally have considerable significance.They are available for whatever special or confidential duties their commanders may wish to entrust to them."

The special staff, which has already been considered to some extent, is composed, as has been shown, of the technical and administrative specialists under the commanders of the higher units. These officers undertake many duties of an operating and administrative nature, particularly in the case of those identified with the facilitative and supply services. In addition to such duties, these officers serve in a somewhat different capacity in relationship to their commanders. They act as technical advisers and consultants on details pertinent to their specialties. "The purpose of the special staff is to provide basic information and technical advice to the commander, . . . to develop the commander's decisions into adequate plans; to translate those plans into orders to the troops or services under their control; to insure the execution of the commander's orders by staff visits and inspections; and to anticipate future needs and draft tentative plans to meet them. The staff functions of the special staff group are mainly advisory in nature . . . . As heads of technical, supply, and administrative agencies, the special staff officers are charged primarily with the functions of operation."[22]

The special staff is spoken of as a collective entity, but it is not what might be termed a collegial body. That is, its separate elements on any given level of command, the specilized officers of the various branches, do not consult and coöperate primarily with

[20] *Ibid.*, p. 38.

[21] *Staff and Logistics*, Special Text No. 162, Army Extension Courses (Washington: Government Printing Office, 1933), p. 2.

[22] "Special Staff," *Command, Staff, and Logistics* (Ft. Leavenworth, Kansas, 1934), p. 2.

each other, but directly with their commander. Special staff officers relieve commanders of the immediate burden of operating facilitative and supply services, and, upon request, will provide technical advice within restricted and prescribed fields. They do not, however, coördinate their collective technical specialties, nor do they deal with tactical and strategical problems involving over-all decisions of policy. Hence, they cannot be expected to lighten some of the gravest responsibilities of their commanders.

The methods and agencies of military control and coördination which have been examined thus far have included the hierarchy, the functional organization, and the personal and special staff services. These means of control and coördination proved adequate so long as the activities of armies were only moderately complex and extensive. Then the commander dealt personally with strategical and tactical matters and, whenever it was necessary, called upon his special staff for technical and administrative assistance and advice. With technical processes relatively simple, and with the total scope of activity not too great for one individual to follow, this "one-man" control was feasible. However, as the size of armies grew into the hundreds of thousands and millions, and as the essential technical processes increased in number and deepened in complexity, it became manifestly impossible for single individuals to direct unaided the larger units of such agglomerations.

In order to lighten the technical and strategical burdens of command, there was then developed the general staff, which is the third type of staff agency found in the United States Army. The origins of this institution in its modern form go back in military history for over a century and a half, although its greatest development has taken place in the last half of that period. Frederick the Great, whose contributions to public administration are well recognized,[23] initiated about 1760, as a result of his experience in the Seven Years' War, the methods of organization and training for general staff service which have developed into the modern military general staff system.[24]

Other nations established general staffs at a much later date than did Germany. For example, the United States did so in 1903,

[23] F. M. Marx, "Civil Service in Germany," *Civil Service Abroad* (New York, 1935), pp. 179–182.

[24] "The Division Commander and His General Staff," *Command, Staff, and Logistics*, pp. 9–10.

and Great Britain in 1904.[25] For some years after the introduction of the general staff in the United States Army, there was considerable confusion as to the true function of such an agency. Beginning about 1906, however, a system of instruction and training modeled along German lines was instituted in the advanced officer-training schools at Ft. Leavenworth, Kansas, and this instruction gradually developed an understanding of general staff methods.[26]

General staffs are found in the division and in all higher units of organization in the United States Army, including the War Department. Somewhat less fully developed general staffs are provided also in the smaller units, down to and including the battalion. The function of a general staff may be defined broadly as the provision of detailed assistance to a commander in the preformance of his technical, tactical, and strategical functions. The general staff supplements the work of the special staff by aiding the commander in correlating and utilizing their services and advice. It aids the commander by assembling the data necessary for making decisions of tactical and strategical policy within the scope of the objectives set by higher command. The general staff assists in the formulation of specific plans to accomplish the aims decided upon by the commander, and it drafts and issues orders in the name of the commander to set in motion the various components of the unit necessary for the execution of the specific plans. Finally, the general staff inspects the efforts made to execute the orders and, if necessary, issues supplementary orders or reports back to the commander the necessity for the revision or extension of plans or policies. In short, the general staff attempts to make the commander ubiquitous and omniscient, so far as his unit is concerned, by carrying his sources of information and his means of supervision and control throughout his command.

Despite the many services which the general staff furnishes the commander, it does not, of itself, possess any of the authority and responsibility which belong to the commander by virtue of his hierarchical position. "The commander is alone responsible for all the unit does or fails to do. Although he may be provided with a staff to relieve him of the burden of details and allow him time for consideration of the broader phases of his duty, he cannot avoid his responsibility for all policies, plans, or basic decisions which affect the condition, morale, training, or employment of his com-

[25] *Ibid.* [26] *Ibid.*, p. 14.

mand."[27] The general staff concerns itself with all matters leading up to the making of final decisions, and with all details of the action based upon those decisions; but it does not, in the last analysis, make the decisions.

Unlike the special staff, the general staff operates as a collegial body. All of its members continually consult and act together. The extent and complexity of its task require, however, a certain amount of functional differentiation within the group. The four functional sub-divisions which are common to the general staffs at all levels of command in the American Army down to and including the division are: (1) a personnel division; (2) a military intelligence division; (3) an operations and training division; and (4) a supply division. Units below the division (brigade to battalion) have staff officers whose functions correspond, in part, to these four subdivisions. In divisions and higher units, the four functional groups are referred to as G-1, G-2, G-3, and G-4 respectively, and in the lower units as S-1, S-2, S-3, and S-4.[28]

The personnel division of a general staff is "charged with general staff functions which relate to the personnel of the command as individuals, that is, not as members of subordinate units."[29] Typical problems considered by this section are matters affecting discipline, welfare, morale, assignment, transfer, and promotion. The military intelligence division is "charged, in general, with the collection and evaluation of information concerning the enemy and the dissemination of the resulting military intelligence."[30] In peacetime, the activities of military attachés, and of observers and missions to foreign countries, fall under the supervision of this division of the War Department General Staff.

The operations and training division has extensive and highly important duties relating to mobilization, organization, distribution, and location of units, troop movements, and military training. This division "must maintain the closest coöperation and collaboration with the other staff sections. It confers directly with the commanders of all combat arms and technical units within the command, with the commanders of supporting units, and with the commanders of other units with which the command may be associated."[31]

[27] *Staff Officers' Field Manual*, Part I, *Staff Data* (Washington: Government Printing Office, 1932), p. 3.

[28] *Ibid.*, p. 6. [29] *Ibid.*, p. 10. [30] *Ibid.*, p. 11. [31] *Ibid.*, p. 13.

The supply division is charged with supervision of all supply arrangements, or logistics. This division "keeps in constant touch with the operations and training section so as to keep informed of changes in the tactical or strategical situation which will necessitate changes in the supply arrangement or in the traffic circulation and control."[32]

In the War Department General Staff there is a fifth functional group which has duties of a nature suitable only to that level. This is the War Plans Division (designated as W.P.D.), which "is charged, in general, with those duties of the War Department General Staff which relate to the formulation of plans for use in the theater of war of the military forces, separately or in conjunction with the naval forces, in the national defense."[33]

In the larger units (division and above), the general staff is organized hierarchically, so to speak, under a chief of staff, a deputy chief of staff (for armies and higher units), assistant chiefs of staff in charge of each of the four functional groups, and a secretary of the general staff (for armies and higher units). The chief of staff is the principal assistant and adviser of the commander. He is in close and continual association with him, and is the link between the general staff and the commander. He acts for the commander during the latter's temporary absence. Customarily, the chief of staff and the commander of a given unit are not both replaced at the same time, so that one or the other may always have the benefit of an experienced associate. The deputy chief of staff assists the chief of staff in directing the work of the general staff and acts for the chief of staff in his absence. The assistant chiefs of staff direct the work of their divisions. The secretary of the general staff is an administrative officer serving the chief of staff and the deputy chief of staff.[34]

Despite the fact that general staffs are thus organized on both functional and hierarchical lines, such structural outlines are not rigidly conformed to by the group. Rather, it is a primary duty of the general staff to consult and coöperate freely within itself, and to avoid the error of treating the several divisions as water-tight compartments.[35]

[32] *Ibid.*, p. 14. [33] *Army Regulations*, No. 10–15, sec. 12.
[34] *Staff Data*, pp. 9–10.
[35] "The Division Commander and His General Staff," *Command, Staff, and Logistics*, pp. 25–26.

The various staff services which have been examined succeed in relieving considerably the burdens which rest upon a commanding officer and contribute materially toward the coördination and control of the Army. The commander's most frequent contacts are limited to those with his immediate hierarchical subordinates and his chief of staff. His relationships with the technical and service specialists are handled largely through his general staff; but if, on occasion, the commander wishes to confer personally with one or another of his special staff officers, he can readily do so. Since the special staff carries the routine burdens of facilitative and supply activities and provides specialized technical advice, and since the general staff bears the weight of details pertaining to technical coordination and tactical and strategical control, the commander can devote himself to basic questions of policy and to the leadership of his command.

IV. APPLICATIONS TO CIVIL ADMINISTRATION

The contributions of the staff services are indispensable in the process of controlling and coördinating the Army. The importance of staff assistance is also recognized in many other fields of organized group action. In large part, the recent report of the President's Committee on Administrative Management was concerned with the problem of strengthening and expanding the staff services of the federal administrative system. In few, if any, other fields, however, has the problem of providing staff assistance been so thoroughly analyzed as in the military sphere. Hence, the doctrines, forms, and even the terminology, of military staff organization may be considered with profit by all students of administration. Perhaps the outstanding conclusions which may be drawn from an inspection of military staff methods are, first, the need for a better classification of the staff services of public administration, and, second, the importance of further development in public administration of staff services which are analogous to the military general staff

In public administration, the term "staff services" is applied indiscriminately to a wide variety of activities such as personnel administration, budget-making, budget-execution, public relations, planning of many kinds, legal services, engineering, and legislative contact work. As a means for analysis, the use of a single term to designate all such services is becoming progressively more confus-

ing. Hence, it would be useful for students of public administration to undertake a better classification of the various staff services. The military terms "special staff" and "general staff" could be used to identify, on the one hand, those staff activities with extensive operating responsibilities, and on the other, those which are concerned chiefly with assisting executive officers in the performance of their broader, over-all functions.[36] Examples of the first type would be budget execution and legal services, and of the second type, public relations and planning. When the general staff services of public administration come to be more clearly identified, it will be possible to concentrate upon their further development and coördination. The possible benefits to be derived by administrators from well planned general staff assistance should, in the light of military experience, be considerable.

The effectiveness of the hierarchical structure of the Army points the way towards necessary improvements in the framework of authority through which guidance and control are exerted over most administrative services. For example, the hierarchy of control through which the President must reach the personnel of the national administrative service is so constructed as virtually to preclude the exercise of continuing and effective direction.[37] Wholly apart from the so-called independent regulatory commissions, the President's power to supervise and direct the federal administrative service is gravely, if not fatally, weakened by his tremendous burden of direct personal contact. These should be limited to a reasonable number, as is done in the military hierarchy. A similar disregard of the limits of the span of effective control is also common on federal departmental and bureau levels, and is frequent in state and local administration.

Moreover, in the case of state and local administration, and, so far as the Humphreys case applies, in federal administration, there is a pronounced tendency to establish irresponsible centers of power in administrative hierarchies which endanger, if they do not deny, the possibility of unified administrative planning and control. Although the full rigors of military hierarchical power certainly need not be imported into public administration, there would well be, in

[36] Cf. J. M. Gaus, "A Theory of Organization in Public Administration," *The Frontiers of Public Administration*, p. 71.

[37] Cf. Marshall E. Dimock, "Executive Responsibility," *The Society for the Advancement of Management Journal*, Vol. 3, pp. 22–28 (1938).

public administration, a thoughtful consideration of the military axiom that power should be commensurate with responsibility.

Military functional organization, as has been shown, makes functional control a secondary and subordinate process and produces, on the higher levels, a series of more or less interchangeable units. This type of organization, in itself, is not suitable for public administration, where the major as well as minor units have (or at least presumably should have) differentiated and clearly defined functional responsibilities. However, the secondary chain of contacts by which coöperation within functional fields is made possible in the Army without infringing on hierarchical controls is a useful device. By means of it, the staff services of public administration could be permitted to coöperate between levels, such as between department and bureau, or headquarters and field service, without producing staff dictation to line authorities.

Absentee Voting in the United States. As part of the most basic process in democratic government, the laws of the various states having to do with absentee participation in elections merit consideration. In the election of November 3, 1936, it is estimated that nearly two per cent of the total of forty-five millions were absentee votes.[1] Furthermore, all available evidence indicates a steady expansion of this figure. The number of federal employees in Washington is on the increase; from this source alone the number of absentee voters in the election of 1936 was over eighty thousand.[2] The revival of business and industry, especially in the fields of transportation and communication, and the growing mobility of Americans generally, can be expected to add their quotas to the total number of absentee voters.

The movement for absentee voting laws for civilians is in the main a feature of the twentieth century. The earliest laws providing for absentee voting were restricted in their application to voters in the armed forces, and were contemporary with the Civil War.[3] The first such law of general civilian application was adopted by Vermont in 1896.[4] Prior to 1913, only one other state followed the leadership of Vermont.[5] In the latter year, four more states were added to the list.[6] The World War seems to have given a decided impetus to the movement, because of the general desire to insure continued electoral activity both by those in the armed forces and by those serving the government in a civilian capacity. By 1924, when American participation in the war was definitely liquidated, all but four states had, or had had, absentee voters' laws on their statute books; but not all these laws extended the privilege of absentee voting to civilians generally.[7] At the present time, only forty-two states permit

[1] This figure is based on an estimate. Only nine states had information as to the number of absentee voters, but these nine collectively present a fair cross-section of the whole United States. The figures, in round numbers, as secured from the respective secretaries of state, are as follows: Arizona, 14,000; Connecticut, 20,000; Maine, 20,000; Massachusetts, 50,000; New Hampshire, 5,000; New Mexico, 1,800; North Carolina, 25,000; Ohio, 56,000; Rhode Island, 1,000.

[2] Marquis W. Childs, in St. Louis *Post-Dispatch*, Oct. 20, 1936.

[3] P. O. Ray, "Military Absent Voters' Laws," in this REVIEW, Vol. 12, pp. 461–469 (Aug., 1918).

[4] P. O. Ray, "Absentee Voting," in this REVIEW, Vol. 11, pp. 116–117 (Feb., 1917).

[5] Kansas, in 1901, with a law applicable only to railroad employees, which was broadened in 1911 to cover "any qualified elector."

[6] Minnesota, Missouri, Nebraska, and North Dakota. See this REVIEW, Vol. 10, pp. 114–115 (Feb., 1916).

[7] P. O. Ray, "Absent Voters' Laws," in this REVIEW, Vol. 18, pp. 321–325 (May, 1924). Since 1924, eight states have enacted absentee voting laws, as follows: Georgia and Texas in 1924, New Hampshire in 1925, New Mexico in 1927,

absentee voting by civilians. New Jersey and Maryland restrict the privilege to voters in the armed forces; Mississippi repealed its law in 1932 and has not yet replaced it; Kentucky, Pennsylvania, and New Mexico have lost theirs via the courts, in 1921, 1924, and 1936, respectively.

Even in the forty-two states, however, not all absentees are permitted to vote. There are several varieties of limitations. One is geographical. Almost universally, it is required that the absentee, to qualify, must be within the territorial limits of the United States.[8] Two states require, in addition, that the absentee shall be within the state's limits.[9] Conversely, two others require that he must be outside the state's limits.[10] The general rule, however, permits the absentee to vote whether inside or outside the state of his residence. A few states demand, in addition, that the absentee be at least a certain minimum distance from his home county, unless absence from the polling place is due to illness or physical disability.[11] In this connection, only twenty-two states make provision for absentee voting by those who, because of illness or physical disability, are unable to attend the polls in person. The procedure for this class of absentees is generally similar to that required for other classes, except that in addition to the other affidavits and jurats, there must usually be a physician's certificate accompanying the application for an absent voter's ballot.[12]

A second class of limitations has to do with the cause of absence. Some states are very rigorous in this respect, others very generous. Seventeen of the forty-two states concerned provide, with varying degrees of exactness, that the absence shall be necessary and unavoidable, that is, due to regular business occupation or profession (or to illness or physical disability). Delaware is typical of this group:[13] "In so far as the provisions of this act shall apply to voters by reason of the nature of their work or business, it is intended that those qualified electors, duly registered, who may vote under the provisions of this article shall be those only who may be absent, or may expect to be absent, from the polling place in the elec-

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Colorado in 1929, Michigan in 1931, Rhode Island in 1932, and Connecticut in 1933.

[8] Tennessee and Virginia constitute the only exceptions. Their laws provide specific arrangements for absentee voting from abroad.

[9] Missouri and Oklahoma. [10] Rhode Island and West Virginia.

[11] Ohio demands a minimum of ten miles, Utah twenty miles. Massachusetts requires that there be at least two municipalities between the voter and the municipality of his residence.

[12] The 22 states are Arizona, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Iowa, Michigan, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oregon, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, and Wisconsin.

[13] *Election Laws of Delaware*, 1936, Art. V, Sec. 149, p. 209.

tion district in which he or she may be a qualified elector, because of the inherent nature of his or her work or business, such as commercial travellers, railroad employees, pilots and sailors, and not merely because such electors may find it more convenient to follow his or her work or employment in localities other than those in which they reside, such as mechanics, farm workers and other laborers."

The remaining twenty-five states lay down more generous terms. Most of them, like California, merely make the general arrangement that any duly registered voter who expects to be absent from his election precinct on the day of an election may procure the proper ballots from his county clerk and cast them in compliance with the laws. Michigan, however, is in a class by itself. After enumerating eight special causes of absence, such as public service, attendance at a university, teaching, commercial traveling, and the like, its law adds a clause to cover "any person necessarily absent while engaged in the pursuit of lawful business, *or recreation*."[14]

Finally, states vary in their generosity with respect to the elections to which absentee voting is applicable. New Hampshire allows it only in elections for presidential and vice-presidential electors, South Carolina only in primaries, North Carolina only in local elections, and Massachusetts only in biennial state-wide elections. Arkansas excludes city elections, either primary or general, California district elections, and Rhode Island all county and local elections. Tennessee is to be found at the other extreme, permitting absentee voting "in any election for any purpose whatsoever."[15] The most generally found provision includes any "general, special, or primary election;" and this seems to be practically as broad as that of Tennessee. Hence it seems safe to say that most of the states allow absentee voting in all elections.

Explanation of these variations appears not only impossible, but futile as well. In some cases, of course, the reasons are obvious. Rhode Island, for example, is so small that it seems only fair to require any voter elsewhere in the state on election day to return to his home precinct and vote in person. Yet West Virginia, much larger, has the same requirement. In Missouri, a constitutional provision requires that absentees shall be within the state to qualify; Oklahoma's law makes the same limitation without any constitutional provision to justify it. As to the variations in classes of absentees permitted to vote, no explanation seems adequate except that opinion differs in different states, on this as on so many other questions. The spiciness of variety is apparently heartily endorsed by American state legislatures.

But the end of variety has not yet been reached; only the beginning has been indicated. In the first place, there are two basic systems rather

[14] *Election Laws of Michigan*, Revision of 1936, Ch. X, Art. 3134.
[15] *Michie's Tennessee Code* of 1932, Sec. 2228, p. 274.

than one providing for absentee voting. One of these, however, has become relatively insignificant, even though rather widely employed a decade ago. Today only one state, Oklahoma, uses it exclusively. Several others continue it as an alternative method, available only to absentees within the bounds of the state.[16]

The Oklahoma law serves to indicate the main provisions of this system.[17] The qualified elector, if unavoidably absent from his home county on election day, may vote in any precinct in which he may happen to be, within the state. All that is required of him, upon presenting himself during polling hours at any such precinct is the making of an affidavit that he has not voted and will not vote elsewhere within the state at such election. The affidavit must also include an identification of his home county and precinct, a statement of the reasons for his absence therefrom, and his temporary address in the precinct in which he proposes to vote. Also he is to present to the officers of this precinct his registration certificate. After having thus proved his identity, the applicant is given the proper ballots, marks them, and withdraws. This completes his task. After he has withdrawn, his ballot, together with his affidavit, must be sent by registered mail to the election board of his home county. This board, after making sure that he has not voted in his home precinct, also must count his vote "in the same manner as if said vote had been cast in the precinct regularly in said county."[18] The law requires that, in the event that there are different local candidates on the ballot, the absentee must strike out their names and write in those of the candidates in his home county whom he favors. This assumes that the absentee will remember those names, an assumption not always justified, especially in the case of purely local officers, or if the absentee has been away from his home county for any length of time. Of course, no difficulty is involved in regard to voting for national and state offices. Besides, there is no more expense or inconvenience for the voter than if he were voting at his home precinct; and the possibility of abuse by dishonest voters has been reduced to a minimum. The most telling objections to this system are that it prevents voting by absentees outside their home states, and also makes only incomplete provision for preserving the secrecy of the ballot. In all probability, these are the main reasons for its failure to secure wider adoption, and even for its replacement in states where it has been used, by the other and more widely applicable method. This latter is now the basic method provided for absentee voting by the laws of forty-one states. Fundamentally, it is designed to permit voting by qualified individuals who are, or who expect to be, absent from their home districts on

[16] Arkansas, Colorado, Florida, Kansas, and Missouri.

[17] See *Primary and General Election Laws of Oklahoma*, 1935, pp. 39 et seq.

[18] *Ibid.*, p. 40.

election day, regardless of whether they are in their own states. It aims, or it should aim, at making the task of the qualified absentee as simple, as convenient, and as inexpensive as is consistent with the prevention of fraud or abuse.

The initial step in setting into motion the election machinery for absentee voting under this plan must everywhere be taken by the prospective voter himself. It is the filing of an application for the absentee ballot with the proper election officials of his home county or city. In all but two of the forty-one states concerned, this step can be taken either in person or by mail, whichever is more convenient for the applicant.[19] Apparently the only limitation on the taking of this step is one of time, which varies considerably from state to state. Three states provide no time limit within which the application must be filed,[20] and two others merely require that it be filed "seasonably."[21] In the others, the maximum number of days before election within which the application must be filed varies from ninety to ten, and the minimum from fifteen to one. The usual requirement is that the application be filed not more than thirty days nor less than one day before the election, whether in person or by mail.

Within these time limits, anyone is free to apply. Whether he appears in person or uses the mails, the election official must deliver to him an application blank.[22] He in turn must fill it out, before the election official if he applies in person, or before a notary or some other person authorized to administer oaths, if applying by mail.[23] In either case, he must take oath as to the truth of the statements made in his application, thus laying himself open to a charge of perjury for any untruth, or of forgery if he attempts to use and sign the name of a qualified elector other than himself.

It should be noted that at this point both inconvenience and expense are involved for the voter who makes application by mail. He must first mail his request for the application blank; after receiving it, he must find a notary or other qualified official before whom he can fill it out and swear to its validity, a procedure involving the payment of a notary's fee; finally, he must mail the filled and signed blank back to the proper election official of his home town, city, or county.

[19] The two exceptions are Georgia, which allows application only by mail, and Louisiana, which allows it only in person.

[20] Arkansas, New Hampshire, and North Carolina.

[21] Maine and Massachusetts.

[22] If the request is made by mail, the application blank is usually forwarded at the state's expense. But there are some exceptions. Georgia, Nebraska, North and South Carolina, Tennessee, and Virginia require the applicant to pay all postage both ways. Texas collects from each applicant $0.15, Wyoming $0.30, and Minnesota, $0.35, to cover the state's expense in each case.

[23] Alabama alone requires no formal application.

The length and detail of the application vary from one state to another. Everywhere except in Alabama, the application must be signed and attested, and must include as a minimum the name and address of the applicant, an identification of the ward or precinct in which he claims to be a qualified elector, and an affirmation of his absence from such ward or precinct on the day of election. This, however, is a bare minimum; most states demand considerably more detail. Many require an exact statement of the causes of absence.[24] Others demand that a certificate of registration accompany the application.[25] Still others insist on an identification so complete as to be nearly equivalent to appearance in person with witnesses.[26] Some are not satisfied with identification alone. In four states, the applicant must also swear that his choices of candidates have been unsubscribed, undictated, and unbought.[27] In four others, he must promise under oath that he will mark and return the ballot in exact conformity with the legal requirements.[28] Five more require an additional pledge that the applicant will not vote elsewhere, either within or without the state, at the election in question.[29]

Some doubt seems justified as to the necessity for so many precautions surrounding the business of merely asking for an absentee ballot. The main result of the precautions appears to be greater inconvenience for the applicant. Adequate safeguards to prevent abuse can be provided at later stages of the process; and this would be sufficient to discourage any ill-considered or dishonest applications. It would at the same time reduce expense and inconvenience for the well-intentioned, fully qualified voter. Alabama alone would appear to have a satisfactory arrangement in this respect. No formal application blank is required; all that is necessary is a notification to the proper election officials, asking for an absentee ballot, and giving name, permanent address, and temporary address. Sufficient precautions can be taken later.

The desirable point for the first real precautions is when the election officials have received the application. Obviously, ballots should not be sent out carelessly; but the task of exercising due care belongs properly on the shoulders, not of the applicant, but of the election officials. Apparently, some of the states have recognized this. In eighteen, however, no check-up by the election officials is provided at this stage.[30] In these

[24] Generally the same states that limit absentee voting to those necessarily and unavoidably absent.

[25] Nebraska and Washington.

[26] Wyoming, for example, requires that the application be accompanied by a statement as to the identity of the applicant, signed and sworn to by two other voters of his home precinct.

[27] Maine, Massachusetts, New Hampshire, and Connecticut.

[28] Iowa, Ohio, West Virginia, and Wisconsin.

[29] Connecticut, Florida, Illinois, Indiana, and Missouri.

[30] Alabama, Arizona, Arkansas, Colorado, Delaware, Idaho, Indiana, Iowa,

states, the law makes it compulsory for the election officials to forward a ballot upon receipt of the application. This does not necessarily signify carelessness; it may, and in most cases does, merely indicate that the states have transferred the burden of proof to the prospective absentee, by means of rigorous, detailed application blanks, as seen above. If the purpose of absentee voting laws is to encourage qualified absentees to vote, then this arrangement can be criticized as wholly unsatisfactory.

The check-up in some of the remaining states is hardly adequate. The laws of nine states merely require the election official who receives the application to "satisfy himself that the applicant is a qualified elector, entitled to vote."[31] This prescription leaves altogether too much discretion to the official. The remaining fourteen states concerned have generally satisfied the requirements of safety, usually by requiring comparison of the signature on the application with that on the registration lists. Thus there is a minimum of inconvenience for the voter, and an easy but dependable check-up by the proper officials to prevent fraud.[32] Most of the states further require that after the check-up, the application must be filed and the applicant's name checked and marked on the registration lists as that of an absentee voter. Some demand, in addition, the publication in a prominent place of a list of names and addresses of all applicants. This arrangement serves as an extra safeguard against fraud, in that it permits the public at large to check the list for possible "ghosts," floaters, and other unqualified applicants.

In all but one of the states concerned, the next step is the forwarding of the ballot and other required paraphernalia to the qualified applicant.[33] This paraphernalia generally includes instructions for proper voting, an envelope in which to seal the marked ballot, and a carrier envelope addressed to the sending election authority, in which to deliver or mail the sealed envelope containing the ballot. The absentee ballot itself is in most states distinguished from the regular ballot; this is done either by making it a different color, or by having it specially marked as an "absent

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Michigan, Minnesota, Nebraska, North Carolina, North Dakota, Texas, Utah, Wisconsin, West Virginia, and Wyoming.

[31] Florida, Georgia, Illinois, Kansas, Missouri, Nevada, New York, Ohio, and Oregon.

[32] South Dakota alone requires that the check-up be made by the election officials of the applicant's home *precinct*. In all the other states, this work is handled by employees of the city or county election board.

[33] The exception is Connecticut, which forwards, instead of a ballot, an "instruction blank." This is marked by the absentee as he wishes, and constitutes his instructions to the election officials of his home precinct to mark his ballot on election day. Of course, under this arrangement, the absentee's ballot is not secret; but the officials concerned must pledge under oath not to reveal the instructions of the absentee except when so ordered by a court of proper jurisdiction.

voter's ballot." No criticism can be made of these arrangements. Everything possible is done to ease the absentee's burden: he receives complete instructions, and all other necessary equipment; all that he must provide is the initiative and the money to cover the expense involved in protecting the sanctity of the ballot.

In this connection, the states concerned are generally careful to prevent fraud and dishonesty in absentee voting. The absentee ballot is nearly always accompanied by an affidavit blank, usually on the envelope in which the ballot is to be sealed, which must be filled out and attested before a notary or other official authorized to administer oaths. The laws almost invariably provide, besides, that the voter shall mark his ballot in the presence of the attesting official, although in such a manner that the latter cannot know for whom or for what it is marked. Usually, the attesting official must himself make a jurat to the effect that this has been done.[34] Idaho, however, merely requires a signed statement that the law has been complied with, and that the ballot has been "marked, folded, and sealed in private and secretly."[35] Michigan requires no attestation, but an affirmation similar to that demanded by Idaho, with the additional proviso that it be witnessed by "two uninterested parties."[36] No doubt the purpose of such simple precautions on the part of Idaho and Michigan is to save the applicant the expense of attestation, but it seems to deserve criticism on the ground of too easy abuse. The precautionary requirements set down by most of the states are generally satisfactory. They cannot be said to overburden the absentee voter, for they require the expenditure by him of little more time and effort than if he were a regular voter. This, plus the slight expense involved, is justified as necessary in the interest of prevention of fraud and abuse.

After marking and sealing his ballot, and filling out the affidavit which accompanies it, the absentee voter has no further responsibility except to mail the ballot and affidavit back to the proper election officials. Some of the states merely assume that the absentee *will* see to it that his marked ballot is returned, and have set down no procedure to guarantee such return. Most of them, however, specify that the absentee must return the ballot, and provide penalties for not doing so. Minnesota even goes so far as to require that the ballot be mailed "in the presence of the attesting officer, who must so certify under his seal."[37] It should also be noted that all the forty-one states concerned have time limits within which the ballot must be received in order to be counted. These limits range from

[34] Of course, for the prospective absentee who applies in person, all these difficulties are obviated, except that he too must fill out and swear to the affidavit.

[35] *Idaho Code Annotated,* 1932, Vol. 1, Ch. 10, Sec. 33–1005, p. 53.

[36] *Election Laws of Michigan* (revision of 1936), Sec. 466, p. 120.

[37] *Statutes of Minnesota,* 1927, Vol. 1, Sec. 503, p. 104.

six days before to six days after the date of election. The usual requirement, however, is that the ballot be received on or before the day of election. If received later, it must be marked as not counted, and kept on file with the other election records and materials.

The remaining steps in the process of absentee voting are carried out exclusively by the election officials. They are essentially the same in nearly all of the states concerned; hence the provisions of the Ohio law can be taken as typical.[38] Upon receipt of an absent voter's ballot, the clerk of the board of elections of his home city, town, or county is required to file it in a secure place, where it is to be kept unopened until delivered to the presiding judge of the precinct where the voter claims residence. All carrier envelopes containing absent voters' ballots deposited with the board or received by mail before the delivery by such board of the election supplies to the various precinct officials are to be opened by the board, and the identification envelopes containing the ballots are to be delivered unopened, along with the other election supplies, to the presiding judges of the proper precincts. The clerk of the board is required also to notify the presiding judges of the precincts, before election day, of any absent voters' ballots sent to voters claiming residence in their precincts. Then, should the voter return unexpectedly to his home precinct on election day, he is not to be allowed to vote in person until he has surrendered the absent voters' ballot and all other supplies with which he may have been furnished. All envelopes containing absent voters' ballots deposited with or received by the board of elections after the delivery of the election supplies, and before noon of the day of election, must be delivered by messenger to the appropriate precinct, and there counted immediately, along with the other ballots. Any absent voter's ballot received after noon of election day is beyond the Ohio time limit, and hence may not be delivered, and is not counted.[39]

The counting itself involves no special difficulty. If the precinct be one where registration is required, the envelope may not be opened until the signature of the voter on it has been compared with that on his registration form, and at least a majority of the judges and clerks agree that the two are identical. If no registration is required, the assumption is made that sufficient precautions against fraud have already been taken; and with no further ado the presiding judge is to tear open the envelope in the presence of all the judges and clerks, but in such a way as not to deface the affidavit printed thereon, or to mutilate the enclosed ballot or ballots. The latter are to be withdrawn, and without being unfolded, are to be

[38] Except in those states where the time limit extends beyond the day of election. In such states, the absentee votes are counted centrally and added to the totals already published for the respective precincts. See *California Election Laws*, Vol. 1, Sec. 1360–1362.

[39] *Ohio Election Laws*, 1933, Ch. XII, Sec. 4785–138, pp. 107–108.

deposited in the proper ballot boxes. The words "absent voter's ballot" must then be entered on the poll list opposite the name of the voter concerned, and the date of the election entered on his registration form. In any cases in which the affidavit is not sufficient, or the signatures do not correspond, or if for any reason it is evident that the absentee is not a qualified elector in the precinct, the ballot is to be rejected, and must be marked "not counted," and the reasons for the rejection given, and then enclosed and returned to the election board along with the other election supplies.

The only chance for fraud or dishonesty in this last stage of the process of absentee voting arises from the possibility that the election officials may themselves be dishonest or corrupt; and that possibility cannot be eliminated by absentee voting laws. If fraud or dishonesty occurs at this stage, therefore, the fault does not lie with the laws on absentee voting. What faults may fairly be attributed to those laws have already been revealed; and it must be admitted that they do not constitute serious flaws. In fact, the conclusion would seem justified that the absentee voter who does his part, as analyzed above, can feel just as certain that his ballot will be counted fairly and honestly as the voter who casts his vote in person on election day.

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The Diversion of Interstate Waters in the United States. Two cases which are concerned with the diversion of the waters of interstate streams were before the United States Supreme Court in the October term of 1937. One of them, Texas v. New Mexico, will be withdrawn from the Court docket when the Rio Grande compact signed by representatives of Colorado, New Mexico, and Texas and a representative of the United States on March 18, 1938, enters into effect. The other case, Nebraska v. Wyoming and Colorado, was first argued before the Supreme Court in 1935. In May, 1938, the Court granted the petition of the United States for permission to intervene. Further written briefs and oral arguments were to be considered by the Court when the fall term of 1938 opened.

Twenty-eight states have participated in the seven adjudicated and two pending suits before the Supreme Court of the United States involving the diversion of waters by one or more states to the injury of one or more other states. The first case, Kansas v. Colorado, was instituted in 1901 and decided in 1907. The second case, Wyoming v. Colorado, began in 1911 and was decided in 1922. But since 1924, seven cases have appeared before the Court. As all of these water diversion suits are controversies between states, the Supreme Court of the United States has original jurisdiction.

Kansas in 1901 sought a decree to restrain Colorado from continuing further diversions of the waters of the Arkansas River to the injury of Kansas.[1] The Arkansas River, which is non-navigable in Colorado and Kansas, rises in the Rocky Mountains in Colorado and, after flowing 280 miles in that state, enters Kansas and flows through the Arkansas Valley in Kansas for 310 miles to enter Oklahoma and then Arkansas before emptying into the Mississippi River. In reply to the complaints of Kansas, Colorado contended that, as a sovereign and independent state, she was justified, if in her judgment her geographical situation and material welfare so demanded, in consuming for beneficial purposes all the waters within her boundaries; and that since the sources of the Arkansas River are in Colorado, she might wholly deprive Kansas and her citizens of any share in the waters of that river.

Colorado, by her legislation, recognized that riparian owners of lands had the right to appropriate the flowing waters of a stream for the purposes of irrigation, and she considered that the priority of appropriation for beneficial use governed the allocation of the waters available. Accordingly, the first riparian owner to take water from a stream was assured that his share of water would always be allowed first before any later appropriator would be considered entitled to his share. This prior appropriation doctrine is the prevailing rule in arid regions because of the existing situation.[2] The lack of adequate rainfall necessitates reliance upon irrigation for the cultivation of land. A continued and reliable right to the use of water from a stream needs to be assured to the first user in order that land cultivation may be furthered; an interference with his needed supply of water would immediately make his land worthless, irrespective of how much time and money he had spent upon it. The distribution of water from a stream according to seniority (in time) of appropriation is an essential and unchanging rule in arid regions of the United States.

Kansas, on the other hand, recognized the right of owners of land on the banks of a river to a reasonable use of the waters available for the purposes of irrigation, subject to the condition of an equitable division

[1] The bill of complaint was filed on May 20, 1901. Colorado demurred. The Court, in the opinion delivered by Mr. Justice Fuller, considered that intricate questions were involved, and decided to overrule the demurrer to permit Colorado to answer the bill of complaint in order that all the facts of the controversy should appear in the evidence presented to the Court. Kansas v. Colorado, 185 U.S. 125 (April 7, 1902).

[2] Cf. the settlement arranged between Great Britain and Egypt concerning the waters of the Nile, which flows through arid land. Exchange of Notes between Mohamed Mahmoud Pasha, President, Council of Ministers, Egypt, and Lord Lloyd, British High Commissioner in Egypt, May 7, 1929. Great Britain, Treaty Series, 1929, No. 17.

between riparian proprietors. She did not need, and accordingly did not follow, the prior appropriation doctrine of Colorado.

In a final decision in Kansas v. Colorado in 1907,[3] the Supreme Court denied the contentions of both Kansas and Colorado. The Court declared that Kansas was not entitled to a decree to enjoin all appropriations in Colorado for irrigation purposes in order to preserve the natural flow of the Arkansas River as it entered Kansas, in accordance with the common law riparian doctrine. At the same time, the Court said that Colorado was not entitled to appropriate all the waters of the river before it reached Kansas. The Court considered that Kansas could not complain if the equitable division rule was administered between herself and Colorado, especially when the waters were, except for domestic purposes, practically useful only for purposes of irrigation. It could not be denied that the diminution of the flow of water in the river by the irrigation of land in Colorado had worked some detriment to the southwestern part of Kansas, but when the Court compared the amount of this detriment with the great benefit which had obviously resulted to the counties in Colorado where the water had been used, it declared that equality of right and equity between the two states forbade any interference with the existing withdrawal of water in Colorado for purposes of irrigation. In dismissing the complaint of Kansas, the Court stated that Kansas could institute new proceedings whenever it appeared that through a material increase in the depletion of the waters of the Arkansas River in Colorado the substantial interests of Kansas were being injured to the extent of destroying the equitable apportionment of benefits between the two states resulting from the flow of the river.

The Supreme Court declared that it applied federal law, state law, and international law, as the exigencies of the particular case demanded, but it considered the decision it reached in Kansas v. Colorado as a significant illustration of "practically building up what may not improperly be called interstate common law." It asserted that one cardinal rule underlying all the relations of the states to each other in the United States was that of equality of right. Whenever the action of one such state reached, through the agency of natural laws, into the territory of another state, the question of the extent and the limitations of the rights of the two states became a matter of justiciable dispute between them. The Supreme Court was called upon to settle that dispute in such a way as to recognize the equal rights of both and at the same time to establish justice between them.

A few years after the decision in Kansas v. Colorado was rendered, Wyoming started proceedings in the Supreme Court to enjoin Colorado and two Colorado corporations, who were acting under a state statute,

[3] Opinion by Mr. Justice Brewer, 206 U.S. 46 (May 13, 1907).

from carrying out their proposed diversion of 50,000 acre feet[4] of water from the Laramie River, a non-navigable stream, to another watershed in Colorado.[5] The Laramie River rises in northern Colorado, flows northerly 27 miles into Wyoming, and then flows north-easterly 150 miles to empty into the North Platte River. For many years, the waters of the Laramie had been used for irrigation purposes in both states. The proposed diversion in Colorado, however, threatened to deprive Wyoming of certain waters which she had already for some time been diverting from the river for her own uses. Both states observed the prior appropriation doctrine in the apportionment of waters within their own borders, which made this case different from Kansas v. Colorado, where Colorado recognized the prior appropriation rule, but Kansas did not.

The Supreme Court accordingly decided in Wyoming v. Colorado to apply the prior appropriation doctrine in a settlement of the distribution of the available waters of the Laramie River among the appropriators in both states, irrespective of the boundary line dividing Wyoming and Colorado. The decree issued in 1922 by the Court[6]—as may be observed, the proceedings lasted for 11 years—divided the waters in accordance with seniority of appropriation for beneficial use: first, 22,250 acre feet to Colorado; second, 272,500 acre feet to Wyoming; and third, the remaining 15,000 acre feet to Colorado. By such a decision, the Court fully protected the lands that were first cultivated by use of the waters of the Laramie River, thus maintaining a condition of stability in the improvement of the arid regions of these two states.

In a decision rendered in 1936[7] on the enforcement of the decree issued by the Court in 1922 in Wyoming v. Colorado, the Supreme Court noted that at the request of Wyoming, Colorado agreed to accord to the officers of Wyoming free access to the measuring devices and to the registering charts, records, and other available data in Colorado, to coöperate freely with Wyoming officers in devising an appropriate plan for measuring the diversions in Colorado, and to give full consideration to such suggestions as were made to Colorado officers respecting the improvement of measuring equipment.[8]

[4] An acre foot is the quantity of water required to cover an acre to a depth of one foot—43,560 cubic feet.

[5] The original bill of complaint was filed on May 29, 1911. A motion to dismiss, equivalent to a demurrer, was argued, and, on Oct. 21, 1912, was overruled without prejudice. The case was argued, and twice reargued, on final hearings, the United States participating in the last two arguments, by leave of the Court. Wyoming v. Colorado, 259 U.S. 419 (June 5, 1922).

[6] For the decree of the Court, as modified from that of June 5, 1922 (259 U.S. 496), see 260 U.S. 1 (Oct. 9, 1922).

[7] 298 U.S. 573. See also 286 U.S. 494 (1932).

[8] Cf. decree issued by the Supreme Court in New Jersey v. New York. See note

An act of Congress in 1899 prohibited any interference with the navigable capacity of the waters of the United States except with the authorization of the Secretary of War.[9] Permits issued to the Sanitary District of Chicago[10] in 1901, as modified in 1903,[11] allowed the diversion of 4,167 cubic feet of water per second from Lake Michigan to the Chicago drainage canal to dilute and force sewage into the Des Plaines River and then by way of the Illinois River into the Mississippi River above St. Louis.[12] In 1912, the Sanitary District sought to secure additional permission to increase the volume of water which it diverted from Lake Michigan, but was refused by the Secretary of War.[13] However, the District proceeded to divert a greater amount of water, which it claimed that it needed because of its increasing population.

After notifying the Sanitary District of Chicago to desist from its excessive withdrawals of water from Lake Michigan, the United States filed a bill in equity in 1913 in a federal district court to enjoin the District from diverting more than 4,167 c.f.s. There was considerable delay in the proceedings, and on appeal to the federal Supreme Court, the decree of the district court to enjoin the District from withdrawing more than the specified amount was affirmed in 1925.[14] Before the Supreme Court decree went into effect, however, the Secretary of War issued

28 below. Cf. also authority given in exchange of notes between Great Britain and Egypt on May 7, 1929, to officials of Egypt to coöperate with the resident engineer of the Sennar dam on the Nile in the Sudan to measure discharges and records of the distribution of water and the regulation of the dam. Mohamed Mahmoud Pasha to Lord Lloyd, Great Britain, Treaty Series, 1929, No. 17.

[9] Sec. 10 of act of March 3, 1899: "That the creation of any obstruction, not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is hereby prohibited; . . . and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Sec. of War prior to beginning the same." 30 *Stat. at Large*, 1121, 1151.

[10] For an extended discussion of the Sanitary District of Chicago situation, see James Simsarian, "The Diversion of Waters Affecting the United States and Canada," *Amer. Jour. of Internat. Law*, Vol. 32, p. 488 (1938).

[11] For permits of Apr. 9, 1901, July 22, 1901, and Jan. 17, 1903, see *Hearings before House Committee on Rivers and Harbors*, on improvements of Illinois River, Illinois, and abstraction of water from Lake Michigan, 69 Cong., 1 Sess., pp. 202–203.

[12] Cf. Missouri v. Illinois and the Sanitary District of Chicago, 180 U.S. 208 (1901) and 200 U.S. 496 (1906).

[13] For opinion of Secretary of War Henry L. Stimson, Jan. 8, 1913, see Canada, *Sessional Papers, 1928*, Sess. Paper No. 227, p. 7.

[14] Sanitary District of Chicago v. United States, 266 U.S. 405 (Jan. 5, 1925), the decree to be effective March 5, 1925.

another permit, on March 3, 1925.[15] allowing Chicago to divert 8,500 c.f.s. until arrangements could be made by the District to carry out sewage treatment by artificial processes in order to decrease the amount of water needed from Lake Michigan. The District had been diverting 8,500 c.f.s. at the time of the Court decision in 1925,[16] and it was realized that if it were to be limited suddenly to 4,167 c.f.s., the city's sewage would pour out into the port of Chicago and pollute Lake Michigan.

In 1925 and 1926, Wisconsin, Minnesota, Michigan, Ohio, Pennsylvania, and New York filed amended bills in the Supreme Court for a decree to enjoin Illinois and the Sanitary District of Chicago from diverting water from Lake Michigan.[17] These states contended that they had been seriously injured by the lowering of the levels of Lakes Michigan, Huron, Erie, and Ontario, and their connecting waterways, and the St. Lawrence River above tide-water, as a result of the Chicago diversion. They asserted that the excessive withdrawals of water by the Sanitary District were for the purpose of taking care of the sewage of Chicago, and accordingly that the Secretary of War was not justified in permitting a continuation of such diversion under any act of Congress by virtue of an authority to regulate interstate commerce over the waters of Lake Michigan. Missouri, Kentucky, Tennessee, Louisiana, Mississippi, and Arkansas intervened as co-defendants.

In the decision of the Supreme Court in 1929,[18] Chief Justice Taft declared that the plaintiff states were entitled to a decree which would be effective in bringing to an end the violation of their rights by the Sanitary District and the unwarranted part of the diversion. The Court decided that it was its duty by an appropriate decree to compel the reduction of the diversion to a point where it rested on a legal basis, and thus to restore the navigable capacity of Lake Michigan to its proper level. Chief Justice Taft noted that some flow from Lake Michigan would be necessary to keep up the navigability of the Chicago River, but that that amount was negligible as compared with the 8,500 c.f.s. being diverted through it to the Chicago drainage canal. The decision of the Court rested on an interpretation of the design of Congress in giving authority to the Secretary of War to make exceptions to the general rule prohibiting all interferences with the navigable capacity of the waters of the United States. The Court held that the Secretary of War had overstepped the authority given him by Congress, in that he had allowed the Sanitary District an excessive volume of water from Lake Michigan.

[15] For permit issued by Secretary of War John W. Weeks, see Canada, *Sessional Papers, 1928*, Sess. Paper No. 227, p. 48.

[16] See *Report of the Special Master, Charles E. Hughes, to the Supreme Court of the United States, Oct. term, 1927, Relating to Lake Levels*, 70 Cong., 1 Sess., H. Doc. 178, p. 53. [17] Wisconsin *et al.* v. Illinois *et al.*, 278 U.S. 367.

[18] *Ibid.* (Jan. 14, 1929). See report cited in note 16 above.

In April, 1930, the Supreme Court entered a decree[19] that the Sanitary District of Chicago and Illinois were enjoined from diverting more than 6,500 c.f.s. from Lake Michigan, until December 31, 1935, when the maximum would be reduced to 5,000. After December 30, 1938, they were enjoined from diverting more than 1,500 c.f.s. The Supreme Court retained jurisdiction of the suit. In October, 1932, the complainant states applied to the Court[20] to secure execution of the decree of April, 1930. Accordingly, a decree was entered in May, 1933,[21] to require Illinois to provide the money necessary and to take the appropriate steps to secure the completion of adequate facilities for the treatment and disposition of sewage in order that the amount of water diverted from Lake Michigan through the Chicago drainage canal might be reduced in accordance with the decree of April, 1930, without creating a dangerously unsanitary condition in and about Chicago.[22]

When Boston and the surrounding metropolitan area were faced with a serious water shortage for drinking and other domestic purposes, the Massachusetts legislature, after a careful study of the water problems of the state, in 1926 and 1927,[23] authorized the diversion of additional water from the Ware and Swift Rivers to meet the need. The Ware and Swift Rivers are non-navigable streams wholly within Massachusetts and tributary to the Chicopee, which empties into the Connecticut River just above Springfield, Massachusetts. The Connecticut River rises in Canada and northern New Hampshire, and flows between New Hampshire and Vermont and through Massachusetts and Connecticut into

[19] Wisconsin *et al.* v. Illinois *et al.*, 281 U.S. 696 (April 21, 1930). Cf. the second report of the Special Master and the opinion of Mr. Justice Holmes on April 14, 1930, in 281 U.S. 179. [20] Wisconsin *et al.* v. Illinois *et al.*, 287 U.S. 568.

[21] Wisconsin *et al.* v. Illinois *et al.*, 289 U.S. 710. Cf. 289 U.S. 395.

[22] On Aug. 21, 1937, Congressman Claude V. Parsons of Illinois introduced the following bill in the House of Representatives (H.R. 8327), which was referred to the Committee on Rivers and Harbors for hearings: "That in order to regulate and promote commerce among the several states and with foreign nations and to protect, improve, and promote navigation and navigable waters in the Mississippi Valley, the Secretary of War is hereby authorized and directed to withdraw from Lake Michigan, in addition to all domestic pumpage, an annual average of five thousand cubic feet of water per second, to flow into the current of the Lakes-to-the Gulf Waterway heretofore authorized by Congress." Cf. Article 8 of the draft Great Lakes-St. Lawrence River treaty submitted by the United States to Canada on May 28, 1938, which proposed that the diversion of water from the Great Lakes system, through the Chicago drainage canal, should be reduced by Dec. 31, 1938 to 1,500 c.f.s. as provided in the decree of the United States Supreme Court of April, 1930. Cordell Hull to Sir Herbert Marler, *Press Releases* Vol. 18, p. 631. For a further discussion, see James Simsarian, "The Diversion of Waters Affecting the United States and Canada," *Amer. Jour. of Internat. Law*, Vol. 32, p. 488 (1938).

[23] *Laws of 1926*, Ch. 375; *Laws of 1927*, Ch. 321.

Long Island Sound. Both Massachusetts and Connecticut recognize the common law doctrine that riparian owners have a right to the undiminished flow of a stream free from unreasonable burden upon it.

Connecticut brought suit against Massachusetts in the Supreme Court to enjoin her from diverting the waters of the Ware and Swift Rivers from the watershed of the Connecticut River.[24] The Court dismissed Connecticut's complaint in February, 1931, because the diversions in Massachusetts did not result in any substantial injury or damage to Connecticut. The careful study of the water problems in Massachusetts before the enactment of the legislation of 1926 and 1927 no doubt influenced the decision of the Court. Mr. Justice Butler, in delivering the Court opinion, asserted that for the decision of suits between states within the United States, federal and international law are considered and applied as the exigencies of the particular case require. Such state disputes are to be settled on the basis of equality of right. But Mr. Justice Butler pointed out that this was not to say that there must be an equal division of the waters of an interstate stream among the states through which it flows. He said:[25] "It means that the principles of right and equity shall be applied, having regard to the 'equal level or place on which all the states stand, in point of power and right, under our constitutional system,' and that, upon a consideration of the pertinent laws of the contending states and all other relevant facts, this Court will determine what is an equitable apportionment of the use of such waters." Mr. Justice Butler also referred to the development of "interstate common law" and its application for the ascertainment of the relative rights of states in respect of interstate waters.

Representatives of New York, New Jersey, and Pennsylvania drew up compacts in 1925, and again in 1927, relative to the waters of the Delaware River, but in each instance, only the legislature of New York ratified, and the legislatures of the other two states did not. Accordingly, New York undertook to divert a considerable amount of water from the tributaries of the headwaters of the Delaware River, in order to increase the available water supply of the City of New York. New Jersey, however, filed a bill of complaint with the Supreme Court of the United States in 1929 to enjoin the contemplated action of the City and State of New York.[26] The tributaries, which New York planned to divert, flow from New York State into the Delaware River where it forms a boundary between New York and Pennsylvania. The Delaware continues its course to the point where New York and Pennsylvania meet New Jersey; then the river forms the boundary between Pennsylvania and New Jersey, and later between

[24] Connecticut v. Massachusetts, 282 U.S. 660 (Feb. 24, 1931). For the court decree entered March 23, 1931, see 283 U.S. 789. [25] 282 U.S. 660, 670.

[26] New Jersey v. New York, 279 U.S. 823 (May 20, 1929).

Delaware and New Jersey; it finally empties into the Atlantic Ocean.

New Jersey insisted to the Court that a strict application of the rules of the common law governing private riparian proprietors subject to the same sovereign power was necessary. But the Court, in the opinion delivered by Mr. Justice Holmes in 1931 in New Jersey v. New York *et al.*,[27] declared that a more liberal rule might be applied than in a controversy between neighbors who were members of a single state. Different considerations come in when the Court is dealing with independent sovereigns having to regard the welfare of the whole population and when the alternative to settlement is war. Mr. Justice Holmes continued that in a less degree, perhaps, the same was true of the "quasi-sovereignties" bound together in the Union. He considered that different traditions and practices in different parts of the country might lead to varying results, but the effort always was to secure an equitable apportionment without quibbling over formulas. He affirmed the adoption of the principle of equitable division by the Master appointed by the Court. The Master found that the tributaries were not navigable, and that the proposed diversion by New York would not impair the navigable capacity of the Delaware River.

The Supreme Court denied the injunction sought by New Jersey, but did limit the amount of water to be diverted by New York from the Delaware River or its tributaries to 440 million gallons daily. The Court pointed out that the water allowed to New York was not to constitute a prior appropriation, nor to give a superiority of right over New Jersey and Pennsylvania in the enjoyment and use of the Delaware River and its tributaries. Pennsylvania had intervened to protect her future interests. The Court decree[28] provided that accredited representatives of New Jersey and Pennsylvania should at all reasonable times have the right to inspect the dams, reservoirs, and other works constructed by the City of New York and the diversion areas and the inflow, outflow, and diverted flow of these areas, and to inspect the meters and other apparatus installed by the City of New York and all records pertaining to the flow of the water.

The Colorado River compact was signed on November 24, 1922, at Santa Fé, New Mexico, by representatives of the seven states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming, and a representative of the United States.[29] The Colorado River rises in Colorado, flows through Utah and Arizona, and forms the boundary between Arizona and Nevada and between California and Arizona.

[27] 283 U.S. 336 (May 4, 1931).

[28] New Jersey v. New York, 283 U.S. 805 (May 25, 1931). Cf. notes 7 and 8 above.

[29] For text of the compact, see H. Doc. 605, 67 Cong., 4 Sess.

Streams from New Mexico and Wyoming contribute to its waters. The Colorado River empties into the Gulf of California after marking the boundary between the United States and Mexico and flowing through Mexican territory for a short distance.

Article 1 of the Colorado River compact declared that its major purposes were to provide for the equitable division and apportionment of the use of the waters of the Colorado River system; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River basin, the storage of its waters, and the protection of life and property from floods. The seven states were divided into an "upper basin" and a "lower basin." Article 3 apportioned 7,500,000 acre feet of water per annum from the Colorado River system to each basin, adding that the "lower basin" might increase its share another 1,000,000 acre feet. Article 4 declared that inasmuch as the Colorado River had ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of the Colorado River basin, the use of the waters for purposes of navigation would be secondary to the uses of such waters for domestic, agricultural, and power purposes.

The act of Congress of August, 1921,[30] under which the Colorado River compact was drawn up, provided that the compact must be approved by the seven signatory states and Congress before it went into effect. Six of the states ratified, but since Arizona refused to do so, Congress passed another measure in December, 1928, entitled the Boulder Canyon Project Act,[31] which provided that ratification of the compact by six of the seven states should be sufficient to make the 1928 statute and the Colorado River compact effective. The six states (with Arizona still refusing to ratify) accepted the compact, and accordingly the Boulder Canyon Act, subject to the provisions of the compact, was proclaimed by the President in June, 1929.[32] The 1928 statute declared that the purpose of the dam to be constructed in the Colorado River at Boulder Canyon was to control the floods, improve navigation, and regulate the flow of the Colorado River, provide for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy as a means of making the project a self-supporting and financially solvent undertaking.

At the point where the dam was to be built in the Colorado River, the middle channel of the river is the boundary between Nevada and Arizona.

[30] Aug. 19, 1921, 42 *Stat. at Large* 171.
[31] Dec. 21, 1928, 45 *Stat. at Large* 1057.
[32] June 25, 1929, 46 *Stat. at Large* 3000.

Arizona statutes prohibited the construction of any dam, even by the United States, in Arizona without the approval of the state engineer; and such approval had not been secured for the construction of Boulder Dam. Arizona filed a bill of complaint in the federal Supreme Court on October 6, 1930, against the validity of the Boulder Canyon Act and the Colorado River compact, and named the Secretary of the Interior and the states of California, Nevada, Utah, New Mexico, Colorado, and Wyoming as defendants. Arizona's complaint was dismissed by the Supreme Court in May, 1931,[33] because there had not been any interference with her rights. In the opinion of the Court, in Arizona v. California *et al.*, Mr. Justice Brandeis declared that as the Colorado River was navigable,[34] and as the means which the federal statute provided were not unrelated to the control of navigation, the erection and maintenance of a dam and reservoir at Boulder Canyon were clearly within the powers conferred upon Congress by the Constitution of the United States.[35]

The state of Washington, in 1931,[36] filed a bill of complaint in the Supreme Court in which she charged that the state of Oregon was wrongfully diverting the waters of the Walla Walla River to the injury of inhabitants of Washington and asked for an adjudication apportioning the interests of the two states in the river and in tributary streams and restraining any use or diversion of the waters found to be unlawful. The Walla Walla River, a non-navigable stream, rises in the Blue Mountains of northeastern Oregon. After flowing for several miles through a narrow canyon, the river broadens out at Red Bridge near Milton, Oregon, where it breaks into two branches. One, the Tum-a-lum, as it is known in Oregon, or the main Walla Walla, as it is known in Washington, flows through cobble rocks over great depths of gravel till it reaches the McCoy Bridge, in Oregon. There springs rise from below the surface and feed the flow anew. Thus reinforced, the stream moves northwesterly to the line between the two states, and again northwesterly for about 30 miles in Washington to its confluence with the Columbia River. The Gardena Farms District draws on the waters of this river in Washington. A second branch of the Walla Walla River, starting at Red Bridge, Oregon, is known as the Little Walla Walla, and it divides after a mile into smaller branches which join the main Walla Walla in Washington, mainly at points below the Gardena intake. Beginning in 1880, irrigators in Oregon maintained crude dams across the Walla Walla River close to the Red Bridge to turn the waters of the river away from the channel of the Tum-

[33] Arizona v. California *et al.*, 283 U.S. 423 (May 18, 1931). The Court decision was on a motion to dismiss by the defendants.

[34] Cf. Art. 4 of the Colorado River compact.

[35] See also United States v. Arizona, 295 U.S. 174 (1935), and Arizona v. California *et al.*, 298 U.S. 558 (1936).

[36] Washington v. Oregon, 283 U.S. 801 (May 18, 1931).

a-lum into the channel of the Little Walla Walla; such waters were used for agricultural, domestic, and kindred purposes in Oregon.

The Walla Walla basin has a semi-arid climate. Agriculture in this region is dependent upon irrigation from a dependable water source. Oregon and Washington agreed in this case that the doctrine of prior appropriation was to govern the individual rights of the land-owners and the water-owners in both states. Washington complained that prior appropriations secured by the Gardena Farms District in 1892 were being interfered with by the diversion of the waters of the Tum-a-lum at Red Bridge into the Little Walla Walla for use in Oregon.

The Supreme Court declared, in its decision in Washington v. Oregon in 1936,[37] that the Gardena Farms District claim was not a valid one as against the Oregon diversion. The Court applied the doctrine of prior appropriation. The Oregon dams in the Tum-a-lum had existed since 1880, and the Gardena Farms District, which was started in 1892, was fully aware from the beginning of its enterprise that the waters of the Tum-a-lum above Red Bridge would not be available for its canal intake from the Walla Walla in Washington. Furthermore, the Court observed that, aside from the question of seniority of appropriation, there would be no advantage to Washington if the Oregon dam were done away with, and Oregon irrigators deprived of the use of the waters of the Tum-a-lum. The nature of the channel of the Tum-a-lum was such that the small quantity of water would be quickly absorbed and lost in the deep gravel in the bottom of the channel, and the water would not flow to the Washington border.

Washington also sought to restrain Oregon farmers from sinking wells upon their land, but the Supreme Court dismissed that complaint also. The water pumped by about 300 wells was used upon the lands where the wells were located, and was not lost from the watershed. The Court declared that the Oregon farmers had a right to pump percolating waters, not following defined subterranean channels, in reasonable quantities for the benefit of the overlying land. The Court noted that use of the water from these wells did not materially lessen the quantity of water available for use in Washington.

The North Platte River, a non-navigable stream, rises in Colorado and enters and traverses Wyoming, crosses the state line into Nebraska, and in that state unites with the South Platte[38] to form the Platte River, which flows through Nebraska to the Missouri River, the eastern bound-

[37] 297 U.S. 517 (March 2, 1936).

[38] For the apportionment of the waters of the South Platte River, see the compact between Colorado and Nebraska, approved by Congress on March 8, 1926, 44 *Stat. at Large* 195. Cf. the La Plata River compact between Colorado and New Mexico, 43 *Stat. at Large* 796 (Jan. 29, 1925).

ary of the state. Appropriations of the waters of the North Platte have been made in Colorado, Wyoming, and Nebraska. Under the Reclamation Act of the United States in 1902,[39] the construction of reservoirs in Wyoming for the storage of water to be used for irrigation was authorized, and the Secretary of the Interior, pursuant to the act, applied to the state engineer of Wyoming and obtained from him permission to construct in that state reservoirs for impounding the waters of the North Platte River. The Secretary of the Interior was given a priority date for the appropriation of the water required. Reservoirs have accordingly been constructed and operated by the United States, and water has been supplied to irrigators in Wyoming.

Nebraska in 1935 started proceedings in the Supreme Court to have determined the rights of Wyoming and Nebraska to the waters of the North Platte. Nebraska maintained that her citizens had prior and senior appropriations of the waters of the North Platte River to those of Wyoming inhabitants and the United States, who were appropriating and using more water than they were entitled to. Nebraska pointed out that both states recognized by their laws the doctrine that the waters of streams may be appropriated for beneficial use and that one whose appropriation is prior in time has the superior right. In April, 1935, the Court denied Wyoming's motion to dismiss.[40] Colorado was ordered to be made a party defendant to the suit,[41] and a Special Master was authorized to submit a report.[42] In May, 1938, the United States was granted permission to intervene.[43] Nebraska v. Wyoming and Colorado is now pending.[44]

The case of Texas v. New Mexico *et al.* was instituted by Texas in 1935[45] to enjoin New Mexico, the Middle Rio Grande Conservancy District, a quasi-municipal corporation, and its directors, from making certain diversions of the Rio Grande, and particularly to enforce Article 12 of the Rio Grande compact of 1929.[46] By Article 12, New Mexico and Texas agreed that prior vested rights above and below Elephant Butte Reservoir should never be impaired by the compact, that New Mexico should not cause or suffer the water supply of the Elephant Butte Reservoir to be impaired by new or increased diversion or storage within the limits of New Mexico unless and until such depletion was offset by an increase of

[39] June 17, 1902, 32 *Stat. at Large* 388. [40] 295 U.S. 40 (April 1, 1935).
[41] 296 U.S. 553 (Dec. 23, 1935). [42] 299 U.S. 510 (Oct. 12, 1936).
[43] Order dated May 16, 1938, *U.S. Law Week*, Vol. 5, No. 37, p. 17.
[44] Cf. *U.S. Supreme Court Service*, Oct. term, 1937, p. 1005.
[45] 296 U.S. 547. Cf. *U.S. Supreme Court Service*, Oct. term, 1937, p. 1006.
[46] The Rio Grande compact was signed on Feb. 12, 1929, at Santa Fé, New Mexico, by Colorado, New Mexico, and Texas. After the legislatures of these three states approved the compact, Congress gave its approval on June 17, 1930, when it became effective. 46 *Stat. at Large* 767.

drainage return. A motion to dismiss was denied by the Supreme Court in March, 1936.[47] A Special Master was appointed by the Court the following May.[48]

Representatives of Colorado, New Mexico, and Texas and a representative of the United States signed a compact on March 18, 1938, in which (in Article 11) New Mexico and Texas agreed that upon the effective date of the compact, all controversies between these two states relative to the quantity or quality of the water of the Rio Grande should be composed and settled. Detailed schedules were worked out for the allocation of the waters of the Rio Grande among the three states involved. The compact will be effective when the three states and Congress ratify it.

Three situations have appeared before the Supreme Court of the United States in cases involving the diversion of interstate waters. First, in the Western states cases, Wyoming v. Colorado and Washington v. Oregon, the Court has settled the interstate controversies by the application of the doctrine of prior appropriation. The state boundary lines in such cases have been ignored, and the settlement has necessitated an examination of the dates of appropriation by water-users in the states involved. The first to use water from the interstate stream was recognized as entitled to the first share of water available. Second, in the Eastern states cases, Connecticut v. Massachusetts and New Jersey v. New York, the doctrine of equitable apportionment has been applied by the Court. In Connecticut v. Massachusetts, the Court pointed out that equitable apportionment did not necessarily mean equal division of the waters of an interstate stream. In Kansas v. Colorado, where Colorado recognized the prior appropriation doctrine, but Kansas recognized the equitable division rule, the Court considered that the equitable apportionment rule was a fair one to apply.

Third, when an act of Congress controlled the rights of parties in conflict over the use of interstate waters, the Court has enforced the federal statute. In Wisconsin *et al.* v. Illinois *et al.*, the Court interpreted the design of Congress as expressed in the federal act of 1899, and adjudicated the rights of Illinois and the Sanitary District of Chicago accordingly. Although the Great Lakes states complained of the injury done them by diversion of the waters of Lake Michigan by the Sanitary District, the Court did not find it necessary to enjoin the actions of the defendants because of the prejudice to the interests of the complainants, but rested its decision entirely on the enforcement of an act of Congress. In Arizona v. California *et al.*, the Supreme Court dismissed the action

[47] Texas v. New Mexico *et al.*, 297 U.S. 698 (March 9, 1936).

[48] Charles Warren was appointed on May 25, 1936. Texas v. New Mexico *et. al.*, 291 U.S. 644.

of Arizona because the Boulder Canyon Act of Congress in 1929 authorized the erection of the dam in dispute.

Other than in the situations in the third category, the Supreme Court has evolved rules of "interstate law" to govern the interstate conflicts in the United States regarding the diversion of waters by one or more states to the injury of one or more other states. The Court referred in several cases to international law, but in no instance was there a clear indication that it was undertaking to apply a rule of international law in the settlement of any question of diversion of waters before it. The Court never sought to determine the existing rule of international law governing such disputes,[49] but instead applied either the priority of appropriation or the equitable apportionment rule, according to the situation that confronted it. In the cases before it, the Supreme Court has evolved equitable rules of "interstate law" to settle the interstate controversies as it considered that they should be solved under a federal system of government.[50]

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The Office of Lieutenant-Governor in the States. The first instances of the office of lieutenant-governor in the history of American political institutions are found in the governments of the colonial period, when in its most usual form the colonial government, like that of the trading company, consisted of a governor, a deputy-governor, a council, and a

[49] Cf. the "thalweg" cases which have appeared before the Supreme Court, in which the Court has examined the existing practices in international law to determine that the middle of the main channel of a boundary river formed the dividing line between two states. See Iowa v. Illinois, 147 U.S. 1 (1893); Louisiana v. Mississippi, 202 U.S. 1 (1906); and New Jersey v. Delaware, 291 U.S. 361 (1934).

[50] Cf. the decision of the Federal Court in Switzerland and the Staatsgerichtshof in Germany where equitable principles were applied for the settlement of intercantonal and interstate controversies involving the diversion of waters.

In Switzerland, the Federal Court settled an action instituted by the canton of Aargau to enjoin the use in the canton of Zurich of the waters of the Jonabach River, a small intercantonal stream, for the generation of power. Jan. 12, 1878, Aargau v. Zurich, Entscheidungen des Schweizerischen Bundesgerichtes aus dem Jahre 1878, Amtliche Sammlung, IV, 34, discussed by Dr. Dietrich Schindler, in "The Administration of Justice in the Swiss Federal Court in Intercantonal Disputes," *Amer. Jour. of Internat. Law*, Vol. 15, pp. 149, 160, and 170 (1921).

In Germany, the Staatsgerichtshof adjudicated a dispute between Württemberg and Prussia and Baden concerning the flow of the Danube River from Baden to the other two states of the German Federation. June 18, 1927, Württemberg and Prussia v. Baden, Entscheidungen des Reichsgerichts in Zivilsachen, CXVI, Appendix, pp. 18–45, discussed in Arnold D. McNair and H. Lauterpacht (eds.), *Annual Digest of Public International Law Cases, 1927–1928* (London, 1931), pp. 128–133.

general assembly. The office was permanent, however, in only two colonies, i.e., Connecticut and Massachusetts. In other colonies, it existed only when there was a particular need for it. For instance, Lieutenant-Governor Pownall was sent to New Jersey in order to have a competent person "upon the spot" to act whenever the infirmities of the governor made it "painful and hazardous if not impossible" for him to attend to the affairs of his office.[1]

Seventy-seven of the nearly 125 state constitutions that have been adopted in the United States since the Declaration of Independence have had provisions for the office of lieutenant-governor, which is found in 35 of the states today.[2] There are three main reasons why the office is found in so many of the states: first, the people want elective officials;[3] second, the office provides for a permanent and impartial presiding officer for the senate without robbing any district of its senator;[4] and third, precedent has favored the office, since from the very beginning it has existed in most of the larger and more influential states.[5] The fact that the United States has a vice-president adds weight to the last reason.

In 24 of the 35 states that have the office, upon the death or resignation of the governor, all the power and authority appertaining to his office "devolve" upon the lieutenant-governor. In Mississippi, he "has the power and discharges the duties." He becomes governor in Alabama, Minnesota, New Mexico, Rhode Island, South Carolina, and Vermont. In four other states,[6] he "exercises" the authorities of the office. Whatever the terminology may be, he has the same plentitude of power as the governor when that office becomes vacant;[7] but he can be denied the oath of office in all but six states.

[1] New Jersey, *Archives*, Vol. 8, pt. 2, pp. 102, 106, 118, 135, 139, and 215.

[2] In all except Arkansas, Florida, Georgia, Maine, Maryland, New Hampshire, New Jersey, Tennessee, West Virginia (where the president of the senate is substitute governor), and Arizona, Oregon, Utah, and Wyoming (where the secretary of state is substitute governor).

[3] In the Maryland convention of 1864, it was pointed out that "the idea of giving the people a chance to elect two officers instead of one was the grand feature which recommended it." Maryland, *Debates and Proceedings*, 1864, pp. 1316–1319; also, Massachusetts, *Debates and Proceedings*, 1820, pp. 127 and 334; Louisiana, *Debates*, 1845, p. 279; and see G. H. Ethridge, *Mississippi Constitutions* (Jackson, 1928), pp. 248–252.

[4] New York, *Debates and Proceedings*, 1846, p. 168; Georgia, *Proceedings*, 1877, p. 110; Kentucky, *Debates and Proceedings*, 1890, pp. 1470–1472; Pennsylvania, *Debates*, 1872, Vol. 2, p. 344; Ohio, *Debates and Proceedings*, 1851, pp. 110, 300–303; and Iowa, *Debates*, 1857, p. 580.

[5] Wyoming, *Journal and Debates*, 1889, p. 347; Massachusetts, *Debates and Proceedings*, 1820, p. 334.

[6] Connecticut, Kentucky, Massachusetts, and Texas.

[7] *Ex parte* Crump, 10 Oklahoma 133; *ex parte* Hawkins, *ibid.* 396; State v. Chambers, 96 Oklahoma 78; and *ex parte* Norris, 8 South Carolina 408. It was held

Each constitution provides that the lieutenant-governor shall act in place of the governor in certain contingencies. About half provide that "the absence of the governor from the state" shall be one such contingency. The supreme court of Louisiana held that a few hours' absence or a few days' absence did not create a "vacancy" in the office of governor.[8] The principle of this case is generally followed, but there are exceptions.[9] The significance of the exceptions is that in some states the lieutenant-governor is given an opportunity to break the continuity of the policy of the administration during his temporary governorship.[10]

The office of lieutenant-governor has been the object of a great deal of scoffing because, among other things, it is said that in the 33 states in which he is presiding officer of the senate he has little power as such.[11] It may be forgotten by the critics that the most satisfactory presiding officer is the most inconspicuous and, to the casual observer, the most insignificant. But what are the lieutenant-governor's powers and duties as president of the senate?

First of all, he exercises the power of committee appointment in one-third of the states.[12] In other states, the appointments are made by the president *pro tempore* or by the senate itself.[13] Full use of the power of recognition belongs to the lieutenant-governor as presiding officer, and gives him influence. He may use it impartially or in accordance with his own desires as they relate to the passage or defeat of measures before the house. The power to make rulings accompanies the power of recognition. By a wise use of this power, a presiding officer can virtually refuse to entertain dilatory and obstructive motions.[14] On the other hand, he can

in Oklahoma that a lieutenant-governor, upon whom the power and authority of the office of governor had "devolved," was ineligible to succeed himself as "governor."

[8] State v. Graham, 26 *Louisiana Annals* 568 (1874).

[9] Montgomery v. Cleveland, 134 Mississippi 132; *ex parte* Crump and *ex parte* Hawkins, both cited above.

[10] In 1900, United States Senator Clark of Montana resigned his office because it was alleged that he had been elected through corruption of the legislature. During an absence of the governor, Lieutenant-Governor Sprigas appointed him to fill the vacancy his own resignation had created. *Compilation of Senate Election Cases* (Washington, 1903), pp. 143 and 906.

[11] The lieutenant-governor of Massachusetts is president of the council; and in Rhode Island, a member of the senate.

[12] Alabama, California, Idaho, Indiana, Iowa, Kentucky, Louisiana, Michigan, New York, and North Carolina. In some of these states, the appointments are made with the "advice and consent of the senate," given in a resolution.

[13] By the president *pro tempore* in Connecticut, Delaware, Missouri, and Pennsylvania; by the senate in Colorado, Illinois, Ohio, Oklahoma, Rhode Island, South Carolina, Virginia, and Wisconsin; by a committee on committees in Minnesota and Nebraska; and in Vermont by a committee of which the lieutenant-governor is a member.

[14] The Indiana general assembly passed a property tax limitation law in a special

encourage such tactics if he sees fit.[15] The power of reference of bills to committees and of submission of bills to the senate gives the presiding officer much influence over legislation. Some states have tried, with varying success, to limit this influence by introducing calendars and steering committees. Little importance can be attached to the duty of the presiding officer to authenticate the acts, measures, and records of the senate with his signature;[16] but there are exceptions.[17]

Most of the states permit the lieutenant-governor to cast a vote in the senate in case of a tie; but this privilege is not important, for, since he is not a member, his vote can have no legislative effect if the constitution requires a majority vote of both houses for the enactment of laws.[18] It is, however, convenient for the lieutenant-governor to exercise this privilege in matters of procedure or routine affairs, for it expedites the business of the house.[19] In four states, he has the right to debate and vote on all questions before the committee of the whole.[20]

The argument that the majority floor leader in the senate is much the more important official can well be granted, for it was never intended that the lieutenant-governor should have any power over legislation.

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session called for that purpose in 1932. While the bill was in the governor's office awaiting signature, opponents undertook to call it back for further consideration. But Lieutenant-Governor Bush had arranged for the Mills Brothers and others to entertain the senate during the closing hours, and all business was out of order. Indiana, *Senate Journal*, Special Session, 1932.

[15] In 1894, the lieutenant-governor of New York ruled that a substitute measure was a new proposition and thereby rendered a rule limiting debate of no effect. New York, *Senate Journal*, 1894, pp. 125, 191, and 196. See Illinois, *Senate Journal*, 1915, pp. 112–125, for an instance of a lieutenant-governor recognizing no members but those who were intent on obstructing the progress of the senate.

[16] Board of Commissioners of Leavenworth County v. Higginbotham, 17 Kansas 62, 75.

[17] State v. Darbelle, 261 Missouri 515. See also Indiana, *Senate Journal*, Special Session, 1932, for an example. Lieutenant-Governor Bush, in the closing hours of the session, refused to sign when the senate voted a bonus to the senate employees. His explanation was: "The constitution says nothing about passing a bill or resolution over the refusal of the lieutenant-governor to sign. Consequently, if the lieutenant-governor refuses to sign and remains in his chair, there is no way to pass anything over his refusal to sign."

[18] Kelly v. Secretary of State, 149 Michigan 343. The lieutenant-governor of Rhode Island is a member of the senate.

[19] Often the lieutenant-governor announces in the event of a tie vote: "A majority not having voted in favor thereof, the motion does not prevail." Riddle, *Legislative Procedure*, p. 15. Mr. Riddle was once the lieutenant-governor of Kansas. Also, W. D. Giles, *The Idaho Legislature*, pp. 15–17. Mr. Giles was once the lieutenant-governor of Idaho. Lieutenant-governors of Indiana usually take the opposite attitude. See Indiana, *Senate Journal*, 1917, pp. 45–46.

[20] Indiana, Missouri, Mississippi, and Texas. He can debate in the committee of the whole in Connecticut.

However, it has been shown that his position as presiding officer is such that if he possesses certain traits of character, he can have influence even in regard to legislation.[21] There is, nevertheless, a limit to the influence that he can exert, and if he does not observe it, he is likely to be put in his place.[22]

There has been comparatively little utilization of the lieutenant-governor as an administrative or executive official. Only inconsiderable, or even optional, duties have been assigned him in connection with state institutions.[23] He is president of the board of education in Iowa and a member of a similar board in Rhode Island.[24] He is a member of the board of finance and control in Connecticut.[25] He is a member of the boulevard commission in Delaware; of the public service board in Nevada; of the board of agriculture in Rhode Island; of the air board of Kentucky; he has been given the right to make certain appointments in Texas; and in Kentucky he makes all the administrative appointments if the governor does not seek "the advice and consent of the senate."

By the state executive-administrative act, approved February 2, 1933, the lieutenant-governor of Indiana was designated as a member of the administrative boards of the departments of state, commerce and industries, public works, and education. Upon the discretion of the governor, he may be designated as the chief administrative officer of the department of commerce and industries and of the department of public works. In addition, the governor is authorized to designate the lieutenant-governor to assist or to represent him before any board or department for any length of time or for any specific purpose.[26] The governor has designated the lieutenant-governor to be the chief administrative officer of

[21] "Shear the lieutenant-governor of every power except that of being presiding officer and he still has more influence than any other man in the senate!," exclaimed a delegate in the Massachusetts convention of 1853. *Debates and Proceedings*, p. 335.

[22] The lieutenant-governor of New York refused to put a motion to seat a member while the convention of 1894 was in session. The convention empowered the president *pro tempore* to preside whenever the lieutenant-governor should refuse to act. New York, *Senate Journal*, February 5, 1894, and *Revised Record of the Constitutional Convention*, 1894, Vol. 1, pp. 394 and 1152; Vol. 2, pp. 26–31 and 483–489; and Vol. 5, p. 746. Similar action was taken in Michigan when the lieutenant-governor tried to rule the evenly divided senate in the special session of 1907. Kelly v. Secretary of State, 149 Michigan 343; Michigan, *Senate Journal*, Extra Session, 1907, pp. 1–3, 42–45, and 72–75; and *Debates and Proceedings*, 1907, pp. 340, 490–492, and 1301–1302.

[23] In Michigan, Minnesota, Missouri, Pennsylvania, and Vermont, he is a "visitor" of the state institutions. In Pennsylvania and California, he is chairman of the board of pardons.

[24] He is *ex officio* member of the board of regents of the state university in California and member of the board of the school for the blind in Texas.

[25] He had part in the administration of the war loans in Pennsylvania and of the soldiers' bonus in Kansas.

[26] Indiana, *Statutes*, 1933, Chaps. 4 and 257.

the department of commerce and industries, and as such as he is also the commissioner of agriculture.

The emoluments of the office range, in 17 states, from an annual salary of $900 in Kansas to $8,000 in Pennsylvania, with an average of a little less than $2,700. In six states, he is paid a salary for each session over which he presides. The other states pay a *per diem* wage.

The above outline of the origin, reasons for existence, and use of the office of lieutenant-governor in the system of state government in the United States naturally suggests an appraisal of the office. The fact that it is not found in 13 states is evidence that it is not an essential office, and the fact that governors are overworked in many states where the office exists is indicative that it is not as useful a device of government as it might be. Manifestly, the problem is one of the utilization of the services of an officer elected by the people of the state to relieve the governor of his routine duties. Although no state has yet made use of the services of the lieutenant-governor primarily to relieve the governor of some of the pressing demands upon his time, the reorganization of the executive-administrative branch of the government of Indiana seems to point to a possible solution for the problem. So far, the Indiana set-up, as noted above, has worked in such a manner as to induce the belief that an arrangement could be made along similar lines by which the governor could be released from the performance of many lesser and routine duties of his office. Whether the Indiana innovation will operate so smoothly when the governor and the lieutenant-governor are strange political bed-fellows, time alone can tell; but such a situation was anticipated when the governor's use of the lieutenant-governor's services was made discretionary.

In view of circumstances which bid fair to perpetuate the office for some time to come, it would be begging the question to propose the abolition of the lieutenant-governorship. Attention may well be fixed upon the scheme that Indiana has devised for utilization of the services of the lieutenant-governor, in the hope that if that experiment does not constitute the solution, it may at least suggest one.

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Some Recent Proposals in the Sphere of Administrative Justice. Among the problems touched upon by the President's Committee on Administrative Management is that of the rôle of administrative discretion in the governmental process. Both Professor Hart and Professor Cushman have contributed to the statement of, and have suggested solutions for, this problem.[1] Professor Hart is concerned with the exercise of a rule-

[1] The special studies involved are entitled "The Exercise of the Rule-Making

making discretion at the administrative level, and has ably defended the exercise of this type of decision-making by personnel under the control of the Executive rather than Congress. In other words, the mere fact that administrative action takes the form of general rules does not relate it functionally to the legislative department, and once the notion that rule-making is "legislation" in a separation-of-powers sense is got out of the way, the case for a complete integration of such powers under the control of the President can be pushed through to unqualified conclusion.

Professor Cushman's treatment of the order-making discretion of administrative authorities does not, however, arrive at a similarly unqualified vindication of presidential power. After an introduction which admirably exposes the policy-making potentialities in the jurisdiction of such agencies as the Federal Trade Commission, he yet hesitates to assign the exercise of the specifically "judicial" functions of the independent boards and commissions to a personnel subject to presidential direction and control. In the result, Professor Cushman suggests, and the President's Committee approves, a scheme under which certain of the preliminary steps in the enforcement of the policies now entrusted to the commissions would be under direct departmental control, while the concluding steps, involving the case-to-case determination of charges brought by administrative officers, would be insulated from such control. It is true that the report contemplates that all of the activities of the present boards and commissions shall be covered into the departmental hierarchy, but inasmuch as so-called "judicial sections" are to be staffed by persons enjoying a complete independence of the department head, the result is continued division of power within the executive department.

The ostensible reason for according administrative judges this independence of executive influence is their devotion to a *judicial function.* But unless this judicial function is the same judicial function as that discharged by the regular courts, it does not follow that independence of tenure is desirable. Upon analysis, administrative justice would seem to involve only a very technical part or aspect of the judicial function which we associate with courts of law. There is, to be sure, a case-to-case disposition of controversies after hearings at which both parties are represented. But the institutional side of law, embodying constitutional notions of restraint upon governmental power, is not reflected in the administrative process. The ideal of administrative justice is simply the enforcement of policy; the scrutiny of that policy in the light of a traditional law—the duty which necessitates judicial independence of government—is no part of the administrative function.

These considerations point to the conclusion that we ought to dis-

Power" and "The Problem of the Independent Regulatory Commissions," respectively.

tinguish between two meanings for judicial function, just as we distinguish between two meanings for legislative function. They suggest also that it may be quite as inappropriate to urge that administrative judges be independent of the executive because they perform a "judicial" function, as it would be to urge that administrative rule-makers be popularly elected because they perform a "legislative" function. Certainly if this construction were adopted it would be possible to avoid the anomaly of freeing acknowledged officers of the executive department from the control of the President.[2]

Of course, a recognition that judicial justice is not a perfect model for administrative justice does not preclude use by the latter of some of the safeguards developed in connection with the former. For example, an opportunity for the defendant to be heard in his own defense, and the disqualification as judges of all persons who have themselves participated in prosecuting the charges against him, are eminently reasonable requirements in both cases. But we should draw the line at setting up administrative judges as a class apart from other administrators. Their true function should be frankly recognized as that of advisors to the head of the department in the exercise of a discretion which is, in the last analysis, his.

It follows from this that the cultivation of professional judicial attitudes on the part of administrative tribunals should be discouraged rather than the reverse. The trial of issues before such a tribunal should represent a stage in the administrative process rather than an appeal from it to some other process. In other words, the chief administrator should use the trial—at which the impact of a rule on the particular case can be fully explored—as a means of elaborating administrative policy. He is not to be thought of as committed to the prosecution in advance of judgment simply because he has control over those who prosecute.[3] In fact, the judgment in the trial is a form of such control, its primary purpose being to correct possible errors of subordinates in the execution of policy; "justice" to the individual litigant is only incidental to this main purpose.

This view of administrative justice is today, and will probably remain

[2] That there is an anomaly here is amply evidenced by the labored attempt of Mr. Justice Sutherland to define the function of Federal Trade Commissioners so as to free them from control by the President. See Humphrey's Executor v. U.S., 295 U.S. 602.

[3] It is the fashion nowadays to deprecate the "mixture" of functions in such agencies as the Interstate Commerce Commission; but few stop to consider wherein this mixture exists. Is it because the same group of men have *control* over the making of rules, their enforcement, and adjudication? Or is it because the same group of men actually do these various things? Only in the latter event should there be any objection.

for some time, definitely unorthodox. Yet there are indications that the orthodox view, which regards "judicialization" of administrative justice as an ideal, is breaking down. In this connection, the writer finds the 1937 report of the American Bar Association's Special Committee on Administrative Law most significant.[4] The report includes the draft of a bill "to provide for more expeditious settlement of disputes with the United States and for other purposes." The bill embodies certain changes in the existing law with respect to both administrative rule-making and administrative order-making.

In the sphere of administrative rule-making, it is proposed to require all administrative agencies to implement the statutes they are called upon to administer with subordinates rules and regulations.[5] This requirement represents the introduction of something like the Continental principle of a general ordinance-making power in the executive. Moreover, the entire process, including amendment of the rules from time to time, is to be under the control of the President, and publication in the *Federal Register* is to constitute official promulgation

Two methods of testing the validity of such rules are possible. Under the first (which is that afforded by existing law), the regulation is challenged if and when it is sought to be applied to some individual. This challenge is heard and decided by the regular courts in a proceeding the main purpose of which is the protection of private rights. This procedure is not interfered with by the bill under discussion.

The second possible method of challenging an administrative rule raises the question of the rule's validity in the abstract, and without regard to the circumstances of any individual case to which it might be applied. The use of judicial agencies for this purpose is characteristically frowned upon by our system of law. Speaking generally, our courts have refused to render advisory opinions or to assume jurisdiction unless the element of controversy is coupled with a demand for private relief of some kind. Moreover, there are many cases in which administrative regulations cannot be tested at all before the courts, by reason of the lack of appropriate jurisdiction. In the bill under discussion, these gaps in our present law are remedied by provision for what M. Duguit would call "objective redress" against the acts of governmental authority. Thus, the Court of Claims—a legislative court—is to be employed to determine the validity of any ordinance upon the petition of any party who might

[4] As printed in the *Advance Program* of the 60th annual meeting of the Association, pp. 168–228.

[5] The novelty of this requirement lies in its application to the substantive side of legislation as well as the adjective. Department heads have long enjoyed the right to prescribe regulations for the government of their departments, but they have had no general authority to amplify the substance of statute by interpretation.

wish to challenge it. The Court of Claims would either approve or annul the ordinance without reference to any concrete case. Of course such intra-administrative litigation would be without prejudice to the jurisdiction at present enjoyed by the regular courts.

There is yet another innovation in the bill which applies to both of the above methods of testing the validity of an administrative ordinance. At present, a judicial declaration of invalidity always operates retroactively to strip the rule of all color of legality. The bill proposes that judicial decisions shall operate only prospectively as respects persons who have in good faith complied with such a rule or regulation. Moreover, this immunity extends for a period of 30 days after the publication of the adverse decision in the *Federal Register*.[6]

Another novel requirement in the bill (though it is one which has been widely adopted in practice) is that for notice and hearing preliminary to the issuance of rules and regulations. It may be observed that while Congress has not yet laid down any general rule respecting committee hearings at the legislative level, nor does the Supreme Court regard hearings as a part of due process of law at the sub-legislative level, it is certainly good policy to hold them at both levels whenever request is made. This is likewise the condition which the Bar Association committee would attach to the general principle of hearings on quasi-legislation.

Coming to the second object of attention in the proposed legislation, i.e., the exercise of quasi-judicial powers, the report frankly repudiates the notion that independent tribunals or courts are the *sine qua non* of administrative justice.[7] Both protected tenure and specialization in judicial work are decried because of their tendency to deprive the persons so set apart from contact with administrative problems and the administrative viewpoint. Hewing to this line, section 3 of the bill provides for the appointment of three-man administrative boards within each department by the department head. The number of such boards is not fixed, but is left to the discretion of the head. Service on a board is not to be exclusive of other administrative tasks, nor does it entail any permanent status. Regular department personnel is to be assigned to the judicial work as agents of the head to advise him on the disposition of appeals against the action of subordinates in the department. In fact, the only

[6] The committee is under great, and frequently acknowledged, obligation to Professor Hart in all of its proposals with respect to quasi-legislation.

[7] It should be mentioned, however, that the committee does not propose to change the present status of the independent boards. It is concerned with extensions of administrative justice, and has given up the legislative or administrative *court* idea for that of administrative *boards*. It is true also that various subjects are excluded from the operation of the proposed system. None the less, the departure from orthodox ideas is clear enough.

limitation which the bill imposes on the administrative chief is that one member of each board shall be a lawyer.

Petitions by aggrieved persons are to be given public hearings by these administrative boards, and power to compel the attendance of witnesses and production of papers is assured through the machinery of the appropriate district court. Having thus laid the basis for a full and free trial of the issue within the department, the Committee proposes that the proceedings therein *shall constitute the permanent record in the case, and that such record shall be the basis for subsequent judicial review in a circuit court of appeals.*

The circuit court of appeals is given jurisdiction to affirm, set aside, or modify the order of the administrative agency; but determinations of fact by the latter may be upset only if unsupported by evidence or if arbitrary or capricious. The only evidence before the court is the evidence duly submitted to the administrative board and certified by it to the court. Moreover, no objection which has not been urged before the administrative board may be considered by the court save in exceptional cases where extraordinary circumstances explain the failure to raise it below.

The thorny problem of the conclusiveness of administrative determinations is thus answered in substantially the same terms that Congress has already used in the case of other agencies administering particular statutes. It is, in the light of experience, a satisfactory if uninspired formula, but the Committee has proceeded boldly in applying it to the activities of a frankly governmental and policy-making agency enjoying no protection against executive authority. The writer believes that this method of attacking the problem of administrative justice is the most practical and realistic one as yet suggested, and that political scientists generally should support this fortunate product of the administrative law committee's deliberations. In doing so, they will be promoting a long step in the direction of a complete administrative integration under centralized control.

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Organization of the Executive Branch of the National Government of the United States: Changes between June 1 and July 15, 1938.[1] As in previous lists, mention is here confined generally to units specifically authorized by law or established by the President by executive order

[1] In the December, 1933, issue of this REVIEW, pp. 942–955, appeared a tabular review of the changes in major units of the national government between March 4 and November 1, 1933. Supplementary lists have appeared in the following issues: April, 1934: changes between November 1, 1933, and March 15, 1934; October, 1934: changes between March 15 and June 30, 1934; February, 1935: changes

under general authority vested in him. Changes in units created by heads of departments or independent establishments are excluded unless of major importance.

Air Commerce Bureau, Department of Commerce. Duties transferred to Civil Aëronautics Authority by Civil Aëronautics Act of 1938 (Public Act No. 706, 75th Congress), approved June 23, 1938.

Air Mail Bureau, Interstate Commerce Commission. Duties transferred to Civil Aëronautics Authority by Civil Aëronautics Act of 1938 (Public Act No. 706, 75th Congress), approved June 23, 1938.

Air Safety Board. Created by the Civil Aëronautics Act of 1938 (Public Act No. 706, 75th Congress), approved June 23, 1938, to investigate accidents involving aircraft, to assist the Civil Aëronautics Authority in ascertaining what will best reduce accidents, and to make such special studies or investigations relating to safety as may be requested or approved by the Authority. The Board is administratively under the Authority, but Sec. 702B provides that: "The Board shall exercise and perform its powers and duties independently of the Authority and shall not be assigned any duties in, or in connection with, any other section or unit of the Authority." The Board consists of three members appointed for staggered terms of six years by the President by and with the advice and consent of the Senate. Each member receives a salary of $7,500 per annum.

Civil Aëronautics Administrator. Created by Civil Aëronautics Act of 1938 (Public Act No. 706, 75th Congress), approved June 23, 1938, to encourage and foster civil aëronautics and air commerce. The administrator is appointed by the President by and with the advice and consent of the Senate, without term, and receives a salary of $12,000 per annum. He has certain plenary powers, but is administratively under the Civil Aëronautics Authority in some respects.

Civil Aëronautics Authority. Created by Civil Aëronautics Act of 1938 (Public Act No. 706, 75th Congress), approved June 23, 1938, for the regulation of interstate air transportation and the fixing of rates for carrying air mail. Consists of five members with staggered terms of six years appointed by the President by and with the advice and consent of the Senate, and at a salary of $12,000 per annum. The members may be removed by the President for inefficiency, neglect of duty, or malfeasance

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between June 30 and December 15, 1934; August, 1935: changes between December 15, 1934, and July 5, 1935; October, 1935: changes between July 5 and August 12, 1935; December, 1935: changes between August 12 and October 15, 1935; June, 1936: changes between October 15, 1935, and April 15, 1936; October, 1936: changes between April 16 and July 31, 1936; August, 1937: changes between August 1, 1936, and May 31, 1937; February, 1938: changes between June 1 and November 30, 1937; August, 1938: changes between December 1, 1937, and May 31, 1938.

in office. No more than three may be of the same political party. The duties of the Bureau of Air Mail of the Interstate Commerce Commission and the Bureau of Air Commerce of the Department of Commerce are transferred to the Authority.

Commission for Celebration of the One Hundred and Twenty-fifth Anniversary of the Battle of Lake Erie. Created by Public Resolution No. 119, 75th Congress. Consists of five men selected by the Speaker of the House of Representatives. An appropriation of $25,000 for expenses is authorized, and $15,000 was appropriated in the Second Deficiency Appropriation Act for 1938 (Public Act No. 723, 75th Congress), approved June 25, 1938.

Commission for Commemoration of the Seventy-fifth Anniversary of the Battles of Chickamauga, Lookout Mountain, Chattanooga, and Missionary Ridge. Created by Public Resolution No. 105, 75th Congress, approved June 10, 1938. Consists of three residents of Chattanooga who are appointed by the President, and who are to serve without compensation. An appropriation of $35,000 for expenses was made in the Second Deficiency Appropriation Act, fiscal year 1938 (Public Act No. 733, 75th Congress), approved June 25, 1938.

Committee on Purchases of Blind-made Products. Created by Public Act No. 739, 75th Congress, approved June 25, 1938, to determine fair market price of brooms, mops, and other commodities offered for sale to the government by any non-profit-making agency for the blind. The Committee consists of one private citizen and a representative of each of the following departments: Navy, War, Treasury, Agriculture, Commerce, and Interior. The members are appointed by the President and serve without additional compensation.

Committee on Use of House Bequeathed to the United States by Justice Oliver Wendell Holmes. Created by Public Resolution No. 124, 75th Congress, approved June 22, 1938, to make recommendations to Congress. Consists of three members of the Senate, selected by the Vice-President, three members of the House selected by the Speaker, and three justices of the Supreme Court selected by the Chief Justice.

Farm Security Administration of the Department of Agriculture (formerly Resettlement Administration). Continued until June 30, 1939, by Sec. 4 of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress), approved June 21, 1938.

Federal Emergency Administration of Public Works. Continued to June 30, 1941, by Sec. 202 of the Public Works Administration Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress), approved June 21, 1938.

Industry Committees. The Fair Labor Standards Act of 1938 (Public Act No. 718, 75th Congress), approved June 25, 1938, provides for the

appointment, by the Administrator of the Wage and Hour Division, of an industry committee for each industry "engaged in commerce or in the production of goods for commerce." Each committee shall include an equal number of persons representing the public, the employees, and the employers. Members shall receive as compensation "a reasonable per diem," prescribed by the Administrator, for each day actually spent in work, and in addition shall be reimbursed for necessary traveling and other expenses. Each committee is to investigate and recommend the minimum wage rate for the industry (the law provides that the minimum shall be not less than 25 cents an hour during the first year, and 30 cents an hour during the next six years).

Joint Committee to Investigate the Phosphate Resources of the United States. Created by Public Resolution No. 112, 75th Congress, to study use, consumption, exports, adequacy, development in Western states, and method of conserving phosphate resources. Consists of three members of the Senate appointed by the President of the Senate and three members of the House of Representatives appointed by the Speaker. Report is to be submitted by February 15, 1939. Not exceeding $10,000 is provided for expenses.

Maritime Labor Board. Created by Title X of the Merchant Marine Act of 1936 (added by Public Act No. 705, 75th Congress), approved June 23, 1938, for mediation in maritime labor disputes. Consists of three members appointed by the President by and with the advice and consent of the Senate. Each member receives a salary of $10,000 per annum.

National Advisory Committee for Aëronautics. The Civil Aëronautics Act of 1938 (Public Act No. 706, 75th Congress), approved June 23, 1938, adds two members from the Civil Aëronautics Authority; it also reduces members not representing government agencies from eight to six.

National Emergency Council. Extended to June 30, 1939, by Executive Order No. 7906 of June 6, 1938. Amends previous order abolishing the Council. Also extended to June 30, 1939, by the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 124, 75th Congress), approved June 21, 1938.

National Resources Committee. Continued until June 30, 1939, by the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress), approved June 21, 1938.

National Youth Administration. Continued until June 30, 1939, by Sec. 4 of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress), approved June 21, 1938.

Quetico Superior Committee. Extended to June 30, 1942, by Executive Order No. 7921 of June 30, 1938. Committee was created by Executive Order No. 6783 of June 30, 1934.

Temporary National Economic Committee. Created by Public Resolu-

tion No. 113, 75th Congress, approved June 16, 1938, to investigate "matters referred to in the President's message of April 29, 1938, on monopoly and the concentration of economic power in and financial control over production and distribution of goods and services and to hear and receive evidence thereon, with a view to determining, but without limitation, (1) the causes of such concentration and control and their effect upon competition; (2) the effect of the existing price system and the price policies of industry upon the general level of trade, upon employment, upon long-term profits, and upon consumption; and (3) the effect of existing tax, patent, and other government policies upon competition, price levels, unemployment, profits, and consumption; and shall investigate the subject of governmental adjustment of the purchasing power of the dollar so as to attain 1926 commodity price levels; . . . ." Consists of three members of the Senate, appointed by the President of the Senate, three members of the House of Representatives, appointed by the Speaker, and one representative from each of the following agencies, to be designated by the respective heads thereof: Departments of Justice, Treasury, Labor, and Commerce, Securities and Exchange Commission, and Federal Trade Commission. The authority conferred expires at the close of the Seventy-sixth Congress. An appropriation of $500,000, of which $400,000 may be allocated by the President to the executive agencies represented on the Committee, was made in the Second Deficiency Appropriation Act, fiscal year 1938 (Public Act No. 735, 75th Congress), approved June 25, 1938.

Wage and Hour Division, Department of Labor. Created by Fair Labor Standards Act of 1938 (Public Act No. 718, 75th Congress), approved June 25, 1938, to enforce the wage and hour provisions of the act. The Division is under the direction of the Administrator of the Wage and Hour Division, who is appointed without term by the President by and with the advice and consent of the Senate, and who receives a salary of $10,000 a year.

Works Progress Administration. Continued until June 30, 1939, by Sec. 4 of the Work Relief and Public Works Appropriation Act of 1938 (Public Resolution No. 122, 75th Congress), approved June 21, 1938.

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COUNTY AND TOWNSHIP GOVERNMENT IN 1937*

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Problems of county and township government continued, during 1937, to attract considerable attention from state legislators, political scientists, and the general public. The legislative sessions of the year were productive of a large number of statutes relating to various aspects of local government and administration; and in several instances local units acted under powers previously granted in adopting governmental forms or procedures more suitable to their needs. Notwithstanding a few backward steps and the fact that progress continued to be slow, the general trend was in the direction of improvement. Clearly in evidence was a tendency to confer additional powers and duties upon the local units; and accompanying this increase in functions were efforts to supply additional revenue, modernize the machinery of government, and provide effective means of control.

The developments of the year will be summarized, as were those for the biennium 1935–36,[1] under the following headings: (1) areas; (2) organization and personnel; (3) functions; (4) finance; (5) optional charters; and (6) intergovernmental relations. To facilitate comparison, the subdivisional arrangement of the article of last year, in so far as it is applicable, will also be followed.

I. AREAS

Territorial Consolidation. The need for reducing the number of local government units through consolidation was given most attention in Pennsylvania. Existing laws governing the formation of new townships were amended to preclude the division of existing townships and to expedite consolidation. Other legislation was intended to facilitate the annexation of first-class townships or parts thereof to contiguous cities or boroughs. First legislative approval was given to a proposed constitutional amendment providing that no new counties shall be created except through the consolidation of existing counties. A proposed amendment for the consolidation of Philadelphia county with the city of Philadelphia was given second legislative passage, only to be rejected by the voters in the November election.[2]

Proposed constitutional amendments prohibiting the abolition of any county except with the approval of the voters thereof were given first

* The writer is indebted to Mr. George Traicoff, a student in the University of Illinois College of Law, for the collection and preliminary analysis of much of the material used in the preparation of this article.

[1] In this REVIEW, Vol. 31, pp. 884–913.

[2] *Laws of Pennsylvania*, 1937, nos. 133, 585, 588; *ibid.*, pp. 2876, 2879; Paul W. Wager, note in *National Municipal Review*, Vol. 26, p. 605 (Dec., 1937).

legislative approval in Nevada and Pennsylvania. Pursuant to a similar amendment adopted in 1936, Montana enacted legislation establishing a procedure for voluntary consolidation of counties by petition and popular vote. The city council of San Diego, California, ordered a referendum on the question of separating the city from the remainder of the county and setting up a consolidated city-county government.[3]

New Areas. Most numerous among the new *ad hoc* authorities established or authorized during the year are those for dealing with various aspects of soil and water conservation. Twenty-two states enacted soil conservation district laws following rather closely the provisions of the standard act recommended by the United States Department of Agriculture.[4] In general, these laws provide that soil conservation districts may be set up, under the supervision of a state soil conservation committee, by vote of the occupiers of the land embraced within the limits of the respective proposed districts. When a district has been formed, its affairs are in charge of a board of five supervisors, three being elected by the farmers of the district and two appointed by the state committee. This board supervises and coördinates the soil conservation and erosion prevention activities of the district, and may prepare land-use regulations which, if approved by the land occupiers at a referendum election, are enforceable by judicial process. The districts have no power to tax or issue bonds, their activities being financed by contributions from coöperating farmers (frequently in the form of labor, materials, or equipment) and grants from the state and federal treasuries. By June 15, 1938, a total of 219 petitions for the organization of soil conservation districts had been filed with state soil conservation committees, and 66 districts had actually been established.[5]

In addition to the soil conservation district acts, several other laws were passed contemplating the formation of districts for somewhat similar purposes. Legislation of such character authorized the establishment of wind erosion districts in New Mexico and Oregon; flood control districts in Idaho and Washington; water conservation districts in Colorado; and drainage and levee districts in Illinois.[6]

[3] *Laws, Resolutions, and Memorials of Montana*, 1937, ch. 105; *Statutes of Nevada*, 1937, p. 564; *Laws of Pennsylvania*, 1937, p. 2879; Paul W. Wager, note in *National Municipal Review*, Vol. 26, pp. 496–497 (Oct., 1937).

[4] A discussion of these acts and the powers of districts formed thereunder will be found in *Soil Conservation Districts for Erosion Control* (Misc. Pub. No. 293, Soil Conservation Service, U. S. Department of Agriculture, Oct., 1937).

[5] Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See *infra*, "New Functions."

[6] *Laws of Colorado*, 1937, chs. 220, 266; *General Laws of Idaho*, 1937, ch. 215; *Laws of Illinois*, 1937, p. 503; *Laws of New Mexico*, 1937, ch. 222; *Oregon Laws*, 1937, ch. 131; *Session Laws of Washington*, 1937, ch. 72.

Outside the field of conservation activities, the special districts or authorities provided for in various states show great diversity. Included in the list are fire protection districts, water districts, institution districts (for care of the indigent), public utility administrations, port authorities, housing authorities,[7] transportation and marketing authorities, auditorium districts, weed eradication districts, sanitary districts, tuberculosis sanitarium districts, and mosquito control districts.

II. ORGANIZATION AND PERSONNEL

New Offices Created. The creation of new offices continued with little promise of abatement. Although the statutes providing for new offices were in most instances of a special nature, applicable only to a single local unit or a limited number of units, a few of them were of general application. The list of county or town offices and agencies thus established or authorized in various states includes welfare boards and superintendents, boards of health, aviation commissions, boards of finance, drought relief committees, tax assessors, policemen, traffic officers, jailers, parole and probation officers, electrical inspectors, and timber wardens. Of particular interest are several special acts in North Carolina creating the office of tax collector in certain counties and relieving the sheriff of the tax-collecting duties which have been imposed upon that official since the creation of his office two centuries ago.[8] Missouri reestablished the office of county treasurer in a large number of counties in which the office had been consolidated, in 1933, with that of county collector. Washington authorized the public prosecutors in the respective counties to employ special criminal investigators endowed with the powers of sheriffs, only to have the statute declared invalid by the state supreme court as violating a constitutional requirement that all county officers be elected.[9]

Consolidation and Abolition of Offices. Little was accomplished during the year in the direction of simplifying local government through the abolition or consolidation of existing offices. Washington, it is true, abol-

[7] See *infra*, "New Functions."

[8] *Public Laws and Resolutions of North Carolina*, 1937, chs. 40, 188, 215, 401, 486; Paul W. Wager, note in *National Municipal Review*, Vol. 27, p. 49 (Jan., 1938). This step has now been taken in fully a third of the state's counties, including most of the more populous ones. For similar provisions with respect to two South Carolina counties, see *Acts and Joint Resolutions of South Carolina*, 1937, nos. 156, 241.

[9] *Laws of Missouri*, 1937, p. 424; *Session Laws of Washington*, 1937, ch. 100; State *ex rel.* Johnston v. Melton, 73 P. (2d) 1334 (Supreme Court of Washington, 1937). Another provision of the Washington statute, purporting to change the official title of the local prosecutor from "prosecuting attorney" to "district attorney," was declared unconstitutional as an attempt to alter by legislative enactment an official title established by constitutional provision. State *ex rel.* Hamilton v. Troy, 190 Wash. 483, 68 P. (2d) 413 (1937).

ished township assessors and boards of review, transferring the functions of those agencies to county authorities; but a proposed amendment to the constitution of Kentucky which would have conferred upon the legislature broad power to consolidate local offices was defeated by the voters.[10]

Term, Qualifications, Election, and Removal of Officers. The enactments of the year indicate a disposition on the part of state legislatures to lengthen the term of local officers. Increased from two to four years was the term of elective county officers in Wyoming, and that of the trustees and clerks of Ohio townships.[11] Legislative proposal was made of constitutional amendments to increase from two to four years the terms of sheriffs and coroners in North Carolina, and of county assessors, treasurers, clerks, sheriffs, coroners, surveyors, school superintendents, and public administrators in Montana. In New York, a constitutional amendment permitting sheriffs to succeed themselves was given second legislative approval and popular ratification. A proposed amendment to eliminate the present constitutional provision that county officers may not serve more than two consecutive terms was approved by the New Mexico legislature only to be defeated by the voters. Likewise defeated was a proposal to amend the North Dakota constitution to eliminate the provision limiting sheriffs and county treasurers to two consecutive two-year terms.[12]

In several instances, steps were taken in the direction of shortening the local ballot and securing better qualified local officials. Washington abolished the elective office of county engineer, authorizing the appointment of engineers by boards of county commissioners. A proposed constitutional amendment given first legislative passage in Pennsylvania would reduce the list of elective constitutional county officers so as to include only the county commissioners, controller, sheriff, and district attorney. The proposed amendment in Montana for increasing the term of county officers would also provide that those officers, in addition to

[10] *Session Laws of Washington*, 1937, ch. 81; letter to the writer from Charles D. Arnett, secretary of state, Commonwealth of Kentucky, Frankfort, July 15, 1938. See this REVIEW, Vol. 31, p. 888.

[11] *Baldwin's June 1938 Ohio Code Service*, secs. 3268, 3299; *Session Laws of Wyoming*, 1937, ch. 85. The terms of designated officers in certain Connecticut towns and North Carolina counties were increased by special acts.

[12] *Laws, Resolutions, and Memorials of Montana*, 1937, ch. 93; *Laws of New Mexico*, 1937, p. 693; *Laws of New York*, 1937, p. 2094; *Public Laws and Resolutions of North Carolina*, 1937, ch. 241; *Laws of North Dakota*, 1937, ch. 108; H. M. Olmsted, note in *National Municipal Review*, Vol. 26, p. 492 (Oct., 1937); letters to the writer from the New York department of state, Albany, Aug. 5, 1938, and from G. A. Gilbertson, deputy secretary of state of North Dakota, Bismarck, Aug. 11, 1938. The vote on the North Dakota proposal occurred at the primary election of June, 1938.

being qualified electors, shall possess "such other qualifications as may be prescribed by law." The South Dakota legislature, carrying out the terms of a recent constitutional amendment, provided for the nomination and election of county school superintendents on a non-partisan basis.[13]

By the terms of legislation enacted during the year, proportional representation may be adopted, by petition and popular vote, by any New York county outside New York City for the election of its county board of supervisors, and by any Massachusetts town for election of the town council. Such counties and towns may also adopt preferential voting for the election of any individual elective officer. County officers in Nebraska, and members of the board of county commissioners of Fulton county, Georgia, were made subject to removal from office by popular recall.[14]

County and Town Executives. Proposals to adopt the manager plan or some other form of responsible-executive government under provisions of optional-charter laws were voted upon and defeated in Erie and Schenectady counties, New York; Gallatin county, Montana; and Chesterfield county, Virginia.[15] In North Dakota, a constitutional amendment authorizing counties having a population of 8,000 or less to adopt the manager form of government was proposed by the legislature, but defeated by the voters.[16]

In contrast to these defeats, Westchester county, New York, adopted a new charter providing for an elective executive; while the two new optional-charter laws enacted by the New York legislature include among their alternative plans of government several variations of the manager and elective-executive plans.[17] Nassau county, New York, elected its

[13] *Laws of Pennsylvania*, 1937, p. 2879; *Laws of South Dakota*, 1937, ch. 122; *Session Laws of Washington*, 1937, ch. 187.

[14] *Acts and Resolutions of Georgia*, 1937, p. 1333; *Acts and Resolves of Massachusetts*, 1937, ch. 345; *Session Laws of Nebraska*, 1937, ch. 55; *Laws of New York*, 1937, ch. 862.

[15] Sidney Detmers, "Reorganization in Erie County, New York," *National Municipal Review*, Vol. 26, p. 494 (Oct., 1937); James E. Pate, "Virginia County Rejects Executive Plan," *ibid.*, p. 605 (Dec., 1937); R. R. Renne, "Gallatin County, Montana, to Vote on Manager Plan," *ibid.*, p. 314 (June, 1937); Paul W. Wager, notes in *ibid.*, pp. 494–495, 605 (Oct., Dec., 1937); H. M. Olmsted, note in *ibid.*, pp. 492–493 (Oct., 1937). The proposals were submitted to the voters in the New York counties by resolution of the board of supervisors, and in the other counties by initiative petition.

[16] The vote on the proposal occurred at the primary election of June, 1938. *Laws of North Dakota*, 1937, ch. 107; information supplied by secretary of state, State of North Dakota, Bismarck. The voters of San Mateo county, California, endorsed an amendment to their home-rule charter to place the manager and several other appointive county officers on the elective list. Approval by the state legislature will be necessary to put the amendment into effect. See Paul W. Wager, note in *National Municipal Review*, Vol. 26, pp. 365–366 (July, 1937).

[17] See *infra*, "Optional Charters."

first county executive under the terms of its new charter adopted in 1936 and effective January 1, 1938.[18] The county commissioners of Pender county, North Carolina, were authorized to designate one of their number as county manager; while manager government was provided, subject to local referenda, for six Maine towns. In a hard-fought referendum election in which an unusually large vote was polled, the voters of Henrico county, Virginia, defeated a proposal to abandon manager government.[19]

Although rejections of county-executive proposals during the year were more numerous than adoptions, it is significant that in no instance did a county actually operating under a form of government including a responsible executive abandon the plan.[20] From such reports as are available, it seems that in most of the counties which have recently adopted charters providing for responsible executives the new set-up is giving general satisfaction and is resulting in more efficient governmental services at reduced cost.[21]

Personnel Administration. The year witnessed significant, if not phenomenal, extension of the principles of the merit system in local government. The number of counties under the merit system increased by three, as compared with an increase of four during the preceding two-year period.[22] Sacramento county, California, established a civil service commission by charter amendment; the electors of Morris county, New Jersey, voted to place their county personnel under the jurisdiction of the state civil service commission; and the employees of Montgomery county, Maryland, were placed under the jurisdiction of the commissioner of state employment and registration by legislative enactment.[23] Several

[18] See *New York Times*, Nov. 3, 1937, p. 17; this REVIEW, Vol. 31, pp. 908–909.

[19] *Private and Special Laws of Maine*, 1937, chs. 25, 32, 57, 66, 81, 82; *Public-Local Laws of North Carolina*, 1937, ch. 216; Walter J. Millard, "Henrico County Citizens Rally to Defend Manager Charter," *National Municipal Review*, Vol. 26, pp. 314–315 (June, 1937); Editorial, "County Manager Plan Triumphs," *ibid.*, p. 336 (July, 1937).

[20] The Georgia legislature, however, provided for the discontinuance, with the end of the term of the present incumbent, of the elective office of county executive in Montgomery county. *Acts and Resolutions of Georgia*, 1937, p. 1387.

[21] See, for example, Cedric Larson, "Six Years of Managership in Arlington County, Virginia," *National Municipal Review*, Vol. 26, pp. 531–537 (Nov., 1937); "Durham County, North Carolina, Saves with Manager," note in *ibid.*, p. 496 (Oct., 1937).

[22] See this REVIEW, Vol. 31, p. 891.

[23] *Laws of Maryland*, 1937, ch. 485; *Civil Service Agencies in the United States: A 1937 Census* (Pamphlet No. 11, Civil Service Assembly of the United States and Canada, Chicago, Jan., 1938), pp. 12–14, 26. According to the Civil Service Assembly's census, 169 of the country's 3,053 counties were operating under the merit system by the end of 1937. Eight of these maintained their own civil service agencies, the others being served by state personnel authorities. Those reported as having their own agencies were Jefferson in Alabama; Alameda, Los Angeles,

states which do not maintain the merit system for county employees in general have recently placed the employees of county welfare departments on a merit basis, this step being taken by Indiana and Washington in 1937.[24] Certain limited beginnings are being made in the direction of providing pre-service and in-service training for county employees. Thus, the civil service commission of Los Angeles county, California, each year appoints eight men from among the graduates of the state's larger universities as apprentices for one year's service.[25] The year 1937 also saw the beginning, in several states, of in-service training programs financed in part by federal grants-in-aid.[26]

Most numerous among the year's legislative enactments with respect to personnel are those establishing or authorizing the establishment of retirement systems for county employees. Retirement systems for Milwaukee county, Wisconsin, and Richmond county (Augusta), Georgia, were established by state legislative enactment.[27] Permissive statutes authorized the establishment of retirement systems, in some instances by popular vote and in others by resolution of the governing board, in California counties, third-class counties in Pennsylvania, and Maine towns. The Georgia legislature proposed a constitutional amendment to permit the enactment of legislation authorizing Chatham county to establish a retirement system, at the same time enacting the contemplated enabling legislation, its effectiveness contingent upon ratification of the proposed amendment. New Jersey provided for pensioning county probation officers in counties having more than 83,000 inhabitants. Some of the retirement plans provided by these various laws are of the wholly-contributory, and others of the part-contributory, type. In most instances, death and disability benefits, as well as retirement annuities, are provided.[28]

Sacramento, and San Diego in California; Cook in Illinois; Multnomah in Oregon; and Milwaukee in Wisconsin. It may be noted further that the new charters of Nassau and Westchester counties, New York, effective in 1938, provide for county civil service agencies with functions similar to those of municipal civil service commissions in that state, the Nassau charter providing for a three-member commission and that of Westchester for a personnel officer. See *Laws of New York*, 1936, ch. 879; *ibid.*, 1937, ch. 617.

[24] *Laws of Indiana*, 1937, ch. 41; *Session Laws of Washington*, 1937, ch. 180. Appointments are to be made from lists of eligibles established by the Indiana state department of public welfare and the Washington state department of social security, respectively.

[25] *News Bulletin of the Public Administration Clearing House*, Chicago, June 7, 1938. [26] See *infra*, "Federal-Local Relations."

[27] *Acts and Resolutions of Georgia*, 1937, p. 738; *Wisconsin Session Laws*, 1937, ch. 201. See also *Wisconsin Session Laws*, 1937, ch. 155, establishing an annuity and benefit fund for sheriffs in Milwaukee county.

[28] *Statutes of California*, 1937, ch. 677; *Acts and Resolutions of Georgia*, 1937, pp. 16, 1273; *Public Laws of Maine*, 1937, ch. 172; *Acts of New Jersey*, 1937, ch. 73; *Laws of Pennsylvania*, 1937, no. 336.

Perhaps the outstanding example, during the year, of progress in the actual administration of the merit system in county government is provided by Jefferson county, Alabama. The civil service machinery established in 1935 to serve that county and the cities of Birmingham and Bessemer consists of a citizens' supervisory committee charged with appointing a personnel board, which in turn appoints a personnel director. Established by the state legislature without local referendum, the system was received by public officials and citizens without enthusiasm, but this original apathy has gradually been overcome. Local officers favorable to the merit system have been elected to office, and the county has been fortunate in its choice of officials responsible for personnel administration. Notwithstanding numerous shortcomings in the act establishing the system, an efficient personnel director has made remarkable progress in the classification of positions and the establishment of eligibility lists. Significant also is the research work which has been carried on by the personnel department, resulting in reports on various subjects, including county purchasing, the overlapping activities of departments, and the organization and operation of the county charity hospital.[29]

III. FUNCTIONS

New Functions. The year witnessed the enactment of a large mass of legislation conferring new powers and functions upon local governmental units. Nine states enacted housing authority laws applicable to counties,[30] while certain other states amended or supplemented earlier statutes. By April, 1938, 15 states authorized counties to engage in housing activities,[31] and by July housing authorities had actually been established in at least 11 counties.[32]

A great deal of legislation in states of the South, West, and Mid-West had as its purpose the conferring upon counties and other local units of powers to deal with problems of agriculture and conservation. Counties

[29] See the first and second annual reports of the Personnel Board of Jefferson County, Alabama (mimeo.), Birmingham, 1936, 1937; Roscoe E. Martin, "Personnel Progress in the Deep South," *National Municipal Review*, Vol. 26, pp. 393–396 (Aug., 1937).

[30] *Acts of Arkansas*, 1937, no. 298; *Statutes of California*, 1937 (spec. sess.), ch. 4; *Acts and Resolutions of Georgia*, 1937, p. 210; *Laws of Indiana*, 1937, ch. 207; *Laws of Maryland*, 1937, ch. 517; *Session Laws of Nebraska*, 1937, ch. 90; *Laws of North Dakota*, 1937, ch. 102; *Oregon Laws*, 1937, ch. 442; *Laws of Pennsylvania*, 1937, no. 265. Most of the acts follow rather closely the model bill drafted by the federal Public Works Administration. Cf. Samuel Taylor, "California Low Rent Housing Legislation," *Southern California Law Review*, Vol. 11, pp. 444–470 (June, 1938).

[31] See *State Government*, Vol. 11, p. 97 (May, 1938).

[32] Data supplied by United States Housing Authority, July 8, 1938. The counties reported as having authorities were Los Angeles and San Francisco (city and county) in California; Alexander, Gallatin, and St. Clair in Illinois; Delaware in Indiana; Passaic in New Jersey; and Allegheny, Delaware, McKean, and Mifflin in Pennsylvania. See *infra*, "Federal-Local Relations."

in Oklahoma and Oregon were authorized to take measures for the prevention of wind erosion; while Kansas enacted a new county wind erosion control law designed to meet the objections of the state supreme court to an earlier law declared unconstitutional in 1936.[33] Several South Carolina counties were authorized to purchase terracing machinery and to make agreements with farmers for the performance of terracing work on their farms; while in Oklahoma provision was made whereby counties may make state-owned terracing machines available to their farmers. In Iowa and Wisconsin, counties were empowered to make feed loans to farmers in drought-stricken regions, Iowa counties also being authorized to operate limestone quarries and sell lime to farmers. Minnesota counties were authorized to purchase seed grain and lend the same to destitute farmers, to be repaid in cash or kind. Boards of county commissioners in Washington, commissioners of irrigation districts in Montana, and special districts in Nebraska were authorized to take action for the eradication of noxious weeds. The counties of Colorado and Oregon were empowered to engage in rodent control work; while Wisconsin made it the duty of counties to assist state authorities in the eradication of insects. Oregon counties were empowered to reforest lands acquired by devise, gift, exchange, or tax foreclosure, and to sell, exchange, or lease such lands. County supervisors in California were given authority to carry on agricultural research, while Oregon county courts were authorized to coöperate with state agencies in the collection and analysis of agricultural statistics. The Georgia legislature proposed a constitutional amendment to enable counties to levy a tax for payment of salaries of county agricultural and home demonstration agents.[34] Perhaps most important of all the legislation of the year relating to agriculture and conservation are the laws enacted in 22 states authorizing the establishment of local soil conservation districts with powers to engage in coöperative action to combat soil erosion through such measures as contour cultivating, strip cropping, and terracing, and to enact and enforce local land-use regulations.[35]

In numerous instances, counties or townships were empowered to engage in various regulatory, inspectional, and licensing activities. Fulton county, Georgia, was authorized to regulate highway traffic outside incorporated areas. Minnesota counties were empowered to license and

[33] *Kansas Session Laws*, 1937, ch. 189; *Session Laws of Oklahoma*, 1937, p. 250; *Oregon Laws*, 1937, ch. 131. See this REVIEW, Vol. 31, p. 895.

[34] *Statutes of California*, 1937, ch. 520; *Laws of Colorado*, 1937, ch. 229; *Acts and Resolutions of Georgia*, 1937, p. 1128; *Acts and Joint Resolutions of Iowa*, 1937, chs. 149, 150; *Session Laws of Minnesota*, 1937, ch. 65; *Laws, Resolutions, and Memorials of Montana*, 1937, ch. 41; *Session Laws of Nebraska*, 1937, ch. 5; *Session Laws of Oklahoma*, 1937, p. 213; *Oregon Laws*, 1937, chs. 294, 298, 402; *Acts and Joint Resolutions of South Carolina*, 1937, nos. 21, 152, 258, 343, 562; *Session Laws of Washington*, 1937, ch. 194; *Wisconsin Session Laws*, 1937, chs. 25, 330.

[35] See *supra*, "New Areas."

regulate itinerant shows, carnivals, circuses, endurance contests, and exhibitions, outside the limits of incorporated municipalities; similar authority being conferred upon ten Maryland counties with respect to dance halls, boxing or wrestling arenas, amusement parks, and tourist camps. In Michigan, township boards were given authority to license and regulate used-car lots; while certain Florida counties were authorized to require that junkyards and used-car lots be fenced from view. Counties in North Carolina were empowered to appoint electrical inspectors with jurisdiction in unincorporated areas and in towns of one thousand population or less. Authority to appoint plumbing inspectors was conferred upon first-class townships in Pennsylvania; while second-class townships in the same state were authorized to adopt building codes. Certain Florida counties were empowered to condemn and demolish buildings deemed dangerous to the public safety or constituting a fire hazard; while Georgia counties were authorized to acquire by purchase, lease, or condemnation any real estate within the county the acquisition of which will promote sanitation, aid in slum clearance, or abate a health nuisance. Authority was conferred upon counties and towns in Minnesota to prohibit the throwing or scattering of garbage upon streets or highways. California boards of county supervisors, along with the governing bodies of cities and city-counties, were empowered to approve or reject codes of fair competition filed therewith by service trades such as barber shops, beauty shops, and cleaners and dyers. Kansas counties were authorized to license the sale of cereal malt beverages.[36]

Several additions were made to the list of local units which have been authorized to spend public funds for publicity purposes. Wisconsin counties and towns were authorized to make annual appropriations, within specified limits, for the purpose of advertising their resources and advantages; and Nevada counties were empowered to levy a tax to promote and publicize their agricultural, mining, and other resources. Appropriations for the purpose of advertising their respective advantages were authorized on the part of Barnstable county, and the towns of Nantucket and Bourne, in Massachusetts. The Georgia legislature proposed a constitutional amendment to permit Ware county to levy a one-mill tax for the purpose of promoting the location of new industries therein. Florida, on the other hand, repealed an act of 1925 authorizing Sumter county to levy a special tax for publicity purposes.[37]

[36] *Statutes of California*, 1937, ch. 396; *General Acts and Resolutions of Florida*, 1937, pp. 241, 581; *Acts and Resolutions of Georgia*, 1937, pp. 780, 785; *Kansas Session Laws*, 1937, ch. 214; *Laws of Maryland*, 1937, ch. 234; *Public Acts of Michigan*, 1937, no. 232; *Session Laws of Minnesota*, 1937, chs. 325, 331; *Public Laws and Resolutions of North Carolina*, 1937, ch. 57; *Laws of Pennsylvania*, 1937, nos. 44, 87.

[37] *Special Acts of Florida*, 1937, p. 1654; *Acts and Resolutions of Georgia*, 1937, p. 1129; *Acts and Resolves of Massachusetts*, 1937, chs. 139, 164, 318; *Statutes of Nevada*, 1937, ch. 181; *Wisconsin Session Laws*, 1937, ch. 28. Also of interest is an

Other functions which during the year were conferred by certain states upon counties and townships, either generally or in specified cases, include library service;[38] establishment and operation of hospitals; provision of recreational facilities; management of fairs; operation of water utilities; establishment and maintenance of airports; provision of garbage disposal facilities; maintenance of fire-prevention and fire-fighting services; construction and maintenance of ocean piers; operation of liquor stores; and offering of rewards for the apprehension and conviction of criminals.

Planning and Zoning. The enactment of state legislation to permit planning and zoning by counties and townships continued to make progress which, although not as striking as that during the two preceding years,[39] was significant. Arkansas and Pennsylvania authorized counties to establish planning agencies; while Maine's zoning enabling act for cities, towns, and villages was amended to permit the local units to engage in planning activities. Zoning power was conferred in Pennsylvania upon counties and second-class townships; in Michigan upon townships of over 5,000 population and townships adjacent to cities of over 40,000 population; and in Florida upon Dade county.[40] The legislature of Georgia proposed, and the voters of the state ratified, two constitutional amendments conferring power upon the legislature to authorize county planning and zoning.[41] Acting under authority of these amendments, one of which applied to Glynn county and the other to any county of over 1,000 population, the legislature, in its special session of 1937–38, passed several enabling acts conferring zoning powers upon particular counties or groups of counties. It may be noted that most of the zoning enabling legislation of the year contemplates the regulation of building construction and use in urban and suburban areas outside incorporated municipalities rather than the regulation of rural land use.

Functional Consolidation. Functional consolidation, taking the form of either joint performance by the units concerned or a contractual agree-

act of Florida authorizing Escambia county to employ agents or representatives to appear before departments or agencies of the state or federal government. *General Acts and Resolutions of Florida*, 1937, p. 834.

[38] The number of county libraries increased during the year from 256 to 275. Julia Wright Merrill, "Public Libraries," *Municipal Year Book*, 1938, pp. 125–128.

[39] See this REVIEW, Vol. 31, pp. 896–898.

[40] *Acts of Arkansas*, 1937, no. 246; *General Acts and Resolutions of Florida*, 1937, p. 245; *Public Laws of Maine*, 1937, ch. 127; *Public Acts of Michigan*, 1937, no. 302; *Laws of Pennsylvania*, 1937, nos. 434, 435, 504.

[41] *Acts and Resolutions of Georgia*, 1937, pp. 24, 1135; *State Legislation on Planning and Zoning* (Circular XII, National Resources Committee, Washington, June 1, 1938), p. 15. This action was in line with a recent decision of the state supreme court indicating that constitutional amendment was necessary to enable the legislature to confer zoning powers upon counties. See this REVIEW, Vol. 31, p. 898.

ment whereby one unit performs services for another, continued to make considerable progress. In southern Indiana, four district health departments, three serving five counties each and the fourth serving four counties, were established under permissive legislation of 1935. Created during a time of floods along the Ohio River to facilitate the work of the state board of health in that region, the districts were placed on a permanent basis after the emergency had passed and are carrying on a broad public health program on a full-time basis. In Champaign county, Illinois, the two adjacent townships containing the "twin cities" of Champaign and Urbana combined in the formation of a health district to serve the community embraced within those townships and including the University of Illinois. Under the district system of administration established in 1935, the entire population of the state of New Mexico now enjoys a full-time, professionalized public health service.[42]

New legislation authorizing functional consolidation by local governmental units was enacted in several states. The coöperation of counties in the establishment of district welfare departments was authorized in Georgia, Michigan, Montana, and Washington. Florida and Utah authorized joint action by counties in the establishment and maintenance of airports. Kansas provided that two or more counties may join in the maintenance of a county home; West Virginia authorized counties to contract with each other for institutional care of persons who are public charges; while Pennsylvania provided that counties may agree with their county-seat cities upon joint operation and management of hospitals and other institutions.[43] Other functions which local units in various states were authorized to perform jointly or for each other include: maintenance of libraries; provision of recreational facilities; fire protection; weed control; working of prisoners; electrical inspection; provision of utility services; and investigation of applicants for relief.

IV. FINANCE

Budgeting and Accounting. Considerable progress was made in the extension of sound budgeting and accounting practices to local govern-

[42] Report of the State Bureau of Local Health Administration, *Indiana Year Book*, 1937, pp. 492–493; Thomas C. Donnelly, *Public Health Administration in New Mexico* (University of New Mexico Bulletin, May 1, 1938); Clyde F. Snider, "Functional Consolidation in Champaign-Urbana, Illinois," *National Municipal Review*, Vol. 27, pp. 378–379 (July, 1938). The Champaign-Urbana district was the fourth such health district, embracing two or more adjacent townships, to be organized under a permissive law enacted by the Illinois legislature in 1917.

[43] *General Acts and Resolutions of Florida*, 1937, p. 21; *Acts and Resolutions of Georgia*, 1937, p. 355; *Kansas Session Laws*, 1937, ch. 327; *Public Acts of Michigan*, 1937, no. 258; *Laws, Resolutions, and Memorials of Montana*, 1937, ch. 82; *Laws of Pennsylvania*, 1937, no. 500; *Laws of Utah*, 1937, ch. 9; *Session Laws of Washington*, 1937, ch. 180; *Acts and Resolutions of West Virginia*, 1937, ch. 73.

mental units. The most comprehensive legislation of this character, as applied to counties, is that of Nebraska, which state enacted two statutes regulating county budgeting, accounting, and auditing. The finance committee of the county board is designated as the budget-making agency of the county, with the provision that the board may, at its option, appoint one of its members, the county clerk, the comptroller, or the manager to act as budget officer in place of the finance committee. Public hearings on the budget are required before the county board acts thereon, and, after the budget has been adopted, contracts made in excess of its provisions are void. A uniform system of accounts for all county offices is to be established by the state auditor of public accounts, the use thereof being mandatory upon county officials. Provision is made for a regular biennial (annual in certain cases) audit of the accounts of all county offices by the state auditor.[44]

Pennsylvania extended to boroughs, institution districts, and second-class townships the provisions for a uniform system of budgeting, reporting, and accounting which had been established for other local units in 1935.[45] County school boards in Florida were required to prepare annual budgets on forms prescribed by the state board of education. Montana amended her county budget law to provide that total appropriations for any year may not exceed those for the preceding year by more than ten per cent, exceptions being made for capital outlays and certain other specified expenditures. Indiana's new tax limitation law provided that supplementary local appropriations made after adoption of the annual budget, which by an act of 1935 require the approval of the state board of tax commissioners, shall be confined to necessary and unavoidable expenditures "growing out of a flood, fire, pestilence, war, or other major disaster." Arkansas made it the express duty of the county prosecuting attorney to enforce the provisions of a constitutional amendment of 1924 prohibiting county officers from issuing warrants or letting contracts in excess of current revenue.[46]

Legislation in Maine requires counties and towns in that state to keep their accounts on forms prescribed by the state department of audit, and

[44] *Session Laws of Nebraska*, 1937, chs. 56, 57. In large measure, this legislation represents a restatement and strengthening of earlier statutory provisions which had proved unenforceable in practice. See E. B. Schmidt, "Nebraska's New County Uniform Accounting Law," *National Municipal Review*, Vol. 26, pp. 448–449 (Sept., 1937).

[45] *Laws of Pennsylvania*, 1937, nos. 330, 366, 396; Thomas A. Logue, "Pennsylvania Modernizes Local Fiscal Systems," *National Municipal Review*, Vol. 26, p. 445 (Sept., 1937).

[46] *Acts of Arkansas*, 1937, no. 193; *General Acts and Resolutions of Florida*, 1937, p. 872; *Laws of Indiana*, 1937, ch. 119; *Laws, Resolutions, and Memorials of Montana*, 1937, ch. 98.

provides for an annual audit of local accounts by the state department. Indiana authorized boards of county commissioners, with the approval of the state board of accounts, to install modern tax-accounting systems in the offices of county auditor and county treasurer. The Missouri legislature provided St. Louis county with an elective budget and accounting officer to be known as the county comptroller; while an appointive county auditor was provided for Montague county, Texas.[47]

Revenue and Taxation. The tendency to provide some degree of tax relief for hard-pressed property-owners continued. Provision for waiving penalties and/or interest on delinquent taxes paid before certain dates was made in Arizona, Nebraska, New Mexico, Tennessee, Oklahoma, Washington, and Wisconsin; while Idaho, Iowa, New Mexico, North Dakota, Texas, and Washington authorized the payment of delinquencies in installments. North Carolina empowered boards of county commissioners to remit the taxes of property-owners suffering damage from tornado or windstorm, and by special acts authorized the compromise or adjustment of delinquent taxes in particular counties. Arizona authorized the compromise of taxes due various special districts, including irrigation, drainage, flood control, and water improvement districts. Laws postponing the date upon which taxes should fall due were enacted by Iowa and Oklahoma. South Carolina granted exemption from county taxes for a limited number of years to new industries locating within specified counties or additions made to industrial plants therein.[48]

In a few instances, steps were taken to provide new sources of local revenue. Thus, Kansas, in enacting a sales tax law, provided for state aid to local schools from sales tax revenues, and for distribution of another part of the proceeds therefrom to counties and other local governments to enable those units to reduce their property levies. Alabama, in abandoning prohibition in favor of local-option, established a system of

[47] *Laws of Indiana*, 1937, ch. 203; *Public Laws of Maine*, 1937, chs. 206, 216; *Laws of Missouri*, 1937, p. 427; *General and Special Laws of Texas*, 1937, p. 606. Florida repealed an act of 1935 requiring counties and other taxing districts to make separate budgets for operating expenses and debt service. *General Acts and Resolutions of Florida*, 1937, p. 221.

[48] *Acts, Resolutions, and Memorials of Arizona*, 1937 (reg. sess.), ch. 46; *ibid.* (2d spec. sess.), chs. 15, 18; *General Laws of Idaho*, 1937, chs. 92, 141; *Acts and Joint Resolutions of Iowa*, 1937, chs. 191, 199; *Session Laws of Nebraska*, 1937, ch. 167; *Laws of New Mexico*, 1937, ch. 127; *Public Laws and Resolutions of North Carolina*, 1937, ch. 15; *Public-Local Laws of North Carolina*, 1937, chs. 11, 70, 76, 91, 145, 150, 244, 375, 596; *Laws of North Dakota*, 1937, ch. 240; *Session Laws of Oklahoma*, 1936–37 (spec. sess.), p. 56; *ibid.*, 1937 (reg. sess.), pp. 477, 478; *Acts and Joint Resolutions of South Carolina*, 1937, nos. 77, 184, 231, 267, 268, 293, 333; *Public Acts of Tennessee*, 1937, ch. 101; *General and Special Laws of Texas*, 1937, p. 923; *Session Laws of Washington*, 1937, ch. 57; *Wisconsin Session Laws*, 1937, ch. 60.

state liquor stores and provided for distribution to the counties of the state of 20 per cent of the net profits of such stores. The new Alabama sales tax law provides that one-fourth of the net proceeds therefrom shall be distributed to the respective counties. Kansas, North Dakota, and West Virginia empowered counties to lease county-owned lands for the utilization of mineral resources. The California legislature proposed a constitutional amendment expressly conferring authority upon the legislature to apportion state funds to local governmental units notwithstanding the prohibition against the state lending its credit to individuals or corporations or making gifts thereto.[49]

Indebtedness. Legislative enactments and judicial decisions evidenced a tendency to expand local borrowing power and provide relief for financially embarrassed units. Illinois increased the borrowing power, for specified purposes, of counties, townships, road districts, and sanitary districts. Massachusetts conferred additional borrowing power upon local units for certain welfare and relief purposes. In Pennsylvania, the legislature gave first passage to a proposed constitutional amendment including among its provisions an enlargement of the borrowing power of counties. The supreme court of Kentucky upheld the validity of the use by a county of a "lease with option to purchase" agreement as a means of financing the construction of a new courthouse where the old building was destroyed by fire and the county had already exhausted its constitutional borrowing power. The Alabama supreme court upheld the issuance, in excess of a general constitutional debt limit, of county highway warrants payable solely out of county receipts from the gasoline tax.[50]

In enacting a new Municipal Debt Readjustment Act[51] to replace the statute invalidated by the United States Supreme Court in 1936, Congress provided for federal judicial enforcement upon minority creditors of a local governmental unit unable to meet its obligations, of a composition arrangement voluntarily agreed upon by the governmental unit itself, acting under state authorization, and the holders of a two-thirds majority, in amount, of the obligations concerned. While townships are included in the list of local units to which the act is declared to apply, it is significant that Congress considered it necessary, in order to meet the objections of the

[49] *General Laws of Alabama*, 1936–37 (spec. sess.), pp. 40, 125; *Statutes of California*, 1937, p. 3026; *Kansas Session Laws*, 1937, chs. 204, 306, 374; *Laws of North Dakota*, 1937, ch. 156; *Acts and Resolutions of West Virginia*, 1937, ch. 24.

[50] *Laws of Illinois*, 1937, pp. 931, 932, 934; *Acts and Resolves of Massachusetts*, 1937, ch. 107; *Laws of Pennsylvania*, 1937, p. 2881; Herbert v. Perry, 177 So. 561 (Supreme Court of Alabama, 1937); Lyon v. Shelby County, 177 So. 306 (Supreme Court of Alabama, 1937); Sizemore v. Clay County, 268 Ky. 712, 105 S. W. (2d) 841 (1937).

[51] 50 *Stat. at L.* 653. The constitutionality of this act was upheld in United States v. Bekins, 58 Sup. Ct. 811 (1938).

Supreme Court to the earlier statute, to omit counties from the provisions of the present act.

Purchasing. Steps toward the improvement of local purchasing procedure were taken in a few states. Minnesota required that specifications for supplies and equipment to be purchased by counties or townships be prepared, whenever possible, so as to permit competition; and provided that, when competitive bids are called for, no bid shall be accepted unless competitive bids have actually been submitted. Michigan required boards of county road commissioners to advertise for sealed bids in connection with purchases of highway machinery or materials involving an expenditure in excess of five hundred dollars; the commissioners' court in certain Texas counties was authorized to constitute the county auditor a county purchasing agent; while Pennsylvania authorized joint purchasing by counties (other than Philadelphia and Allegheny) and other local units, and required that purchases amounting to more than five hundred dollars be made on the basis of competitive bidding.[52] It has been estimated that centralized purchasing in some form existed in fifty counties at the beginning of 1937.[53]

The Fee System. In a few instances, action was taken looking toward abolition of the fee system of compensating local officials, or retention of the salary system as against proposals to revert to fee compensation. Thus, the fee method of compensating county officers would be abolished by the adoption of a proposed constitutional amendment given first legislative approval in Pennsylvania; while the voters of Texas defeated a proposed amendment to give the legislature full power to prescribe the method of compensating district, county, and precinct officers.[54] The effect of the latter proposal, had it been adopted, would have been to nullify the provisions of an amendment of 1935 abolishing the fee system of compensation in certain counties and authorizing its abolition by the commissioners' courts of other counties.[55] Statutes placing all or certain officers of particular counties on a salary basis were enacted in Florida, Georgia, and South Carolina.[56]

[52] *Public Acts of Michigan*, 1937, no. 292; *Session Laws of Minnesota*, 1937, ch. 416; *Laws of Pennsylvania*, 1937, no. 118; *General and Special Laws of Texas*, 1937, p. 639.

[53] See H. M. Olmsted, note in *National Municipal Review*, Vol. 26, p. 312 (June, 1937).

[54] *Laws of Pennsylvania*, 1937, p. 2879; *General and Special Laws of Texas*, 1937, pp. xxxvi, 1501.

[55] See this REVIEW, Vol. 31, p. 906; J. Alton Burdine, "Experience with the Salary System in Texas," *National Municipal Review*, Vol. 27, pp. 111–112 (Feb., 1938).

[56] *General Acts and Resolutions of Florida*, 1937, pp. 187, 262, 273, 585; *Acts and Resolutions of Georgia*, 1937, p. 616; *Acts and Joint Resolutions of South Carolina*, 1937, nos. 85, 123. The Florida acts, in some instances, were subject to local referendum.

V. OPTIONAL CHARTERS

In 1937, as in the two years preceding, New York led the way in providing optional forms of government for counties. It will be recalled that the adoption of the county "home rule" amendment of 1935 was followed, in 1936, by enactment of the Fearon-Parsons law providing five optional forms of government for counties outside New York City.[57] Two additional optional-charter laws were enacted in 1937.[58] One of these, the Buckley-Reoux law, provides five alternative forms of government as follows: (1) a "county-president" form with a board of supervisors and an elective executive; (2) a "county-manager" form with a board of supervisors and an executive appointed by the board; (3) a "council-president" form with a small elective county council and an elective executive; (4) a "council-manager" form with a small council and an appointive executive; and (5) a "selective" form offering various combinations of the features contained in the foregoing plans. The other, the Desmond-Mailler law, offers four options: (1) a "county-mayor" or elective-executive form; (2) a "county-manager" form with an appointive executive having a free hand in the selection of his subordinates; (3) a "county-director" form with an appointive executive whose appointments must be confirmed by the board of supervisors; and (4) a "county-board" form with an organizational set-up along traditional lines. Moreover, within the confines of these four general plans several optional variations are offered, including the transfer of functions from towns and cities to the county, elimination of towns, non-partisan elections, the use of proportional representation in the election of members of the board of supervisors, and the use of preferential voting in the election of other county officers. Each law provides that a proposal to adopt any one of the alternative forms of government may be placed before the voters either by popular petition or by resolution of the board of supervisors.

In addition to enacting the two general optional-charter laws just noted, the 1937 session of the New York legislature approved a new charter for Westchester county which was ratified by the county voters in the November election. By the terms of the new charter, the present board of supervisors of 42 members is retained for the time being, but may be abandoned, by popular vote, in favor of a small county board. An elective executive is provided.[59]

[57] See this REVIEW, Vol. 31, p. 908.

[58] *Laws of New York*, 1937, chs. 862, 863. See also George H. Hallett, Jr., "Comprehensive County Bills Pass in New York," *National Municipal Review*, Vol. 26, p. 316 (June, 1937).

[59] *Laws of New York*, 1937, ch. 617; Audrey M. Davies, "An Alternative Form of Government for Westchester County, New York," *National Municipal Review*, Vol. 26, pp. 367–368 (July, 1937). Two other optional charters had previously been rejected by the voters of Westchester county. *New York Times*, Nov. 4, 1937, p. 18.

A proposed constitutional amendment approved by the Pennsylvania legislature in 1937 will, if approved a second time by the legislature and ratified by the voters, authorize the enactment of legislation providing optional forms of county government.[60]

VI. INTERGOVERNMENTAL RELATIONS

State-Local Relations. The relationship between the states and their local units continued to be characterized by an ever-increasing extension of central control over local affairs. Most of the provisions for supervision established during the year were of the administrative variety. Pennsylvania required local tax collectors to file reports with the state department of internal affairs upon forms supplied by the state department. Counties and towns in Maine, and counties in Nebraska, were made subject to regular audits by state agencies. In several instances, state approval as a condition precedent to local action, or a right of appeal from local action to some state authority, was provided. Thus, Indiana required that plans and contracts for county road construction be approved by the state highway commission, and that tax-accounting systems installed in county offices be approved by the state board of accounts. County welfare budgets must be approved in Kansas by the state board of social welfare and in Washington by the state department of social security. Both Indiana and New Mexico strengthened still further their well-known systems of state control over local finance. In the former state, county boards of tax adjustment, which had previously been empowered to authorize property levies in excess of the general maxima prescribed by the tax limitation law, were limited to the function of recommending such authorization to the state board of tax commissioners for final action. New Mexico conferred additional powers upon the state comptroller, with the approval of the chief tax commissioner and the attorney-general, to revise county and other local budgets in emergencies; made auditing contracts between local governments and private auditing firms subject to the state comptroller's approval; and authorized the comptroller to suspend from office any county or municipal official failing to perform his fiscal duties in a proper manner. Iowa adopted the principle of the "Indiana plan" by creating a state appeal board to hear and determine appeals by local taxpayers from proposed expenditures and tax levies.[61]

State authorities were empowered to prescribe forms for county school budgets in Florida; tax-assessment forms for Montana counties; and ac-

[60] *Laws of Pennsylvania*, 1937, p. 2879.

[61] *Laws of Indiana*, 1937, chs. 119, 135, 203; *Acts and Joint Resolutions of Iowa*, 1937, ch. 91; *Kansas Session Laws*, 1937, ch. 327; *Public Laws of Maine*, 1937, chs. 206, 216; *Session Laws of Nebraska*, 1937, ch. 57; *Laws of New Mexico*, 1937, ch. 233; *Laws of Pennsylvania*, 1937, no. 584; *Session Laws of Washington*, 1937, ch. 180.

counting forms for town and county officers in Maine and county officers in Nebraska. Participation by state welfare agencies in the appointment of county welfare officials was provided in Idaho, Illinois, Michigan, Missouri, and South Carolina, the Illinois state department of public welfare also being authorized to remove county welfare superintendents.[62] The North Carolina state board of alcoholic control was given broad supervisory authority over county liquor stores, including supervision of purchasing and approval of prices. In Washington and West Virginia, state welfare authorities were empowered to take over the administration of public assistance in any county failing to comply with federal requirements. New Mexico provided that, in case a local-government official is suspended from office by the state comptroller, the latter officer shall assume control of the office concerned and may cause removal proceedings against the suspended official to be instituted by the attorney-general.[63] The administration of three Maine towns was taken over by the state emergency municipal finance board under the terms of recent legislation authorizing that board to take over and administer the affairs of municipalities in straitened financial circumstances.[64]

Although the extension of state supervision over local government has resulted, in most instances, from a desire on the part of the states themselves to foster efficiency and economy in local services, it is significant that in several instances the states have been motivated, at least in part, by federal requirements or suggestions. Thus several states enacted new welfare laws or revised existing laws with a view to qualifying more fully for benefits available under the federal Social Security Act, and in so doing provided for a high degree of supervision by state authorities over local welfare agencies. Again, in providing for broad supervisory powers to be exercised by a state soil conservation committee over the affairs of local soil conservation districts, many states followed rather closely the provisions of the standard soil conservation districts act prepared and recommended by the United States Department of Agriculture.

An attempt in Pennsylvania to extend state control over county finance was frustrated by judicial decision. A statute enacted by the legislature

[62] *General Acts and Resolutions of Florida*, 1937, p. 872; *General Laws of Idaho*, 1937, ch. 216; *Laws of Illinois*, 1937, p. 451; *Public Laws of Maine*, 1937, chs. 206, 216; *Public Acts of Michigan*, 1937, no. 258; *Laws of Missouri*, 1937, p. 467; *Laws, Resolutions, and Memorials of Montana*, 1937, p. 711; *Session Laws of Nebraska*, 1937, ch. 57; *Acts and Joint Resolutions of South Carolina*, 1937, no. 319. Most of the state laws authorizing the establishment of soil conservation districts provided for the appointment of two of the five district supervisors by a state soil conservation committee. See *supra*, "New Areas."

[63] *Laws of New Mexico*, 1937, ch. 233; *Public Laws and Resolutions of North Carolina*, 1937, ch. 49; *Session Laws of Washington*, 1937, ch. 180; *Acts and Resolutions of West Virginia*, 1937, ch. 71.

[64] Roy H. Owsley, note in *Public Management*, Vol. 19, pp. 372–373 (Dec., 1937).

of that state provided that in third-class counties the members of the county board for the assessment and revision of taxes, now appointed by the respective boards of county commissioners, should thenceforth be appointed by the state auditor-general, and that the tenure of present board members should be terminated upon the taking effect of the act. It was further provided that the members of the state-appointed county tax board should sit as additional members of the county salary board whenever the latter board was convened for the purpose of fixing the salary of tax-board members. The statute was declared unconstitutional by the Pennsylvania supreme court on the ground that it violated the provision of the state constitution that appointive officers shall be removable at the pleasure of the appointing power. According to the court, when an express single method of accomplishing a purpose is provided by a constitution, that method is exclusive; and the provision of the statute for the termination of the tenure of present board members constituted an attempt by the legislature to remove officials appointed by the board of county commissioners. "The abolition of certain offices is a legislative function, but the abolition of *officers* is not." The court also felt that the provision for appointment of local assessment officials by a state agency violated the principle of local self-government; and that the conferring upon board members of a substantial share in the fixing of their own salaries was "offensive to the people's conception of official propriety" as evidenced by provision in the state constitution that increases in the salaries of state legislators shall not become effective during the terms of the members making such increases, and that legislators shall not vote on matters in which they are personally interested.[65]

Federal-Local Relations. Contacts between the Federal Government and the various local governmental units continued to be of growing significance and to increase in number and variety. Together with other local units, counties and townships continued to be the recipients of federal loans and grants for buildings and other public works projects. Numerous states, in providing for the establishment of local housing authorities, authorized coöperation and agreement between such authorities and the Federal Government with a view to enabling the local agencies to avail themselves of federal loans and grants under the terms of the United States Housing Act of 1937. By July, 1938, the United States Housing Authority had earmarked federal funds for five county housing authority projects.[66] Coöperation with the Federal Government in flood-control

[65] *Laws of Pennsylvania*, 1937, no. 256; Commonwealth *ex rel.* Smillie v. McElwee, 327 Pa. 148, 193 Atl. 628 (1937).

[66] Data supplied by the United States Housing Authority, July 8, 1938. The counties for which earmarkings had been made were Los Angeles and San Francisco (city and county) in California, Delaware in Indiana, and Allegheny and McKean in Pennsylvania.

projects was authorized on the part of counties in Ohio and Oregon, flood control districts in Idaho and Washington, and drainage and levee districts in Illinois and Arkansas. Colorado empowered water conservation districts to enter into contracts with the Federal Government.[67]

The year saw the first appropriation made under the George-Deen Act of 1936 making federal vocational-education funds available to the states, on the usual match-fund basis, for public-service training; and, led by Michigan and New York, approximately a dozen states have now organized programs of in-service training for local officials under joint sponsorship of their state vocational-education authorities and leagues of municipalities.[68] Through the statutory authority of the Secretary of Agriculture to require the enactment of suitable state laws for prevention and control of erosion as a condition precedent to the extending of federal soil erosion benefits, the Soil Conservation Service of the United States Department of Agriculture has been very influential in determining the form of recent state legislation authorizing the organization of local soil conservation districts.[69] When a soil conservation district meeting federal standards has been organized, it may apply for federal assistance in carrying out its program; and, by July 15, 1938, "memoranda of understanding" providing for such assistance had been entered into by the Department of Agriculture with 36 districts in 11 states.[70] Finally, the enactment by Congress of the new Municipal Debt Readjustment Act established judicial relief to local governmental units as a new and unique type of federal-local relationship.[71]

[67] *Acts of Arkansas*, 1937, no. 67; *Laws of Colorado*, 1937, chs. 220, 266; *General Laws of Idaho*, 1937, ch. 215; *Laws of Illinois*, 1937, p. 503; *Baldwin's June 1938 Ohio Code Service*, sec. 6443-1; *Oregon Laws*, 1937, ch. 314; *Session Laws of Washington*, 1937, ch. 72. Also of interest is a decision of the Colorado supreme court upholding, as against the contention that no legitimate "local and municipal" purpose was involved, the validity of a bond issue by the city and county of Denver to buy land to be donated to the Federal Government as a site for an air corps technical school. McNichols v. City and County of Denver, 74 P. (2d) 99 (Supreme Court of Colorado, 1937).

[68] Earl D. Mallery, "Federal-City Relations in 1937," *Municipal Year Book*, 1938, pp. 197–209, 206; Arnold Miles, "In-Service Training for Municipal Employees," *Public Management*, Vol. 20, pp. 107–109 (Apr., 1938); H. M. Olmsted, note in *National Municipal Review*, Vol. 27, pp. 373–374 (July, 1938).

[69] 49 *Stat. at L.* 163. See *supra*, "New Areas."

[70] Data supplied by Soil Conservation Service, U. S. Department of Agriculture.

[71] See *supra*, "Indebtedness;" E. H. Foley, Jr., "Recent Developments in Federal-Municipal Relationships," *University of Pennsylvania Law Review*, Vol. 86, pp. 485–516 (Mar., 1938).

The Critical Problems of Canadian Federalism. Canadian federalism in recent years has been passing through the sharpest crisis in its history, a crisis which emerges out of its legal structure and the new financial strains to which it has been subjected in the decade of depression. The appointment in 1937 of a Royal Commission to investigate extensively federal and provincial relations was a tardy recognition by the government at Ottawa that the complex economic and constitutional problems of the Canadian state require thorough study, and informed treatment on the basis of such study. In an article necessarily brief, the background to the malady of the federal system can be sketched in only the broadest outlines. In 1867, it was the hopeful assumption of the fathers of Canadian union that they had created a strong national government. From observing closely the constitutional difficulties of the United States in the fifties and sixties, they were convinced that the mistake made at Philadelphia in 1787 was that of leaving political power at the center weak. "Here," said Macdonald in the debates of 1865, "we have adopted a different system. We have strengthened the general government . . . We have thus avoided that source of weakness which has been the cause of the disruption of the United States."[1]

The method of strengthening the federal government prescribed by Macdonald and his associates was to endow it with the authority of disallowing, at need, provincial legislation and of appointing and holding responsible the lieutenant-governors of the provinces as formal executives,[2] while granting to the federal parliament power of legislation in major matters not given to the federal authority in the United States, such as banking and criminal law, and, most significant of all, the residue of legislative power over matters of national importance. This federal residue was to be secured by enabling the parliament "to make laws for the peace, order, and good government of Canada in relation to all matters" not assigned exclusively in section 92 to the legislatures of the provinces. Thus it was thought that Canada had an instrument of government and law designed to guarantee its consistent growth as a highly integrated community.

While from 1867 to the present there has been no formal amendment of the distribution of legislative power, in the interval constitutional convention and judicial interpretation have played a dual part in so fashion-

[1] See W. P. M. Kennedy, *Documents of the Canadian Constitution* (Toronto, 1918), p. 606.

[2] In the early years of federation, Sir John Macdonald clearly acted on the assumption that the lieutenant-governors were little more than the obedient servants of the federal government, an assumption well illustrated in his correspondence with Sir James Aikins, lieutenant-governor of Manitoba, 1882–88.

ing the federal system that it might hardly be recognized, certainly not with satisfaction, by Macdonald and his federally-minded colleagues. Conventions, for example, have reduced the disallowance of provincial statutes to the condition of being, in Burkeian phrase, an extreme medicine of the constitution, rarely to be applied. So infrequent has been its use in recent decades that Mr. Aberhart, in his self-interested ingenuity in reading constitutional facts, came to the conclusion that it was dead.[3] But more significant, although closely related to the changing conventions of the constitution, has been the way in which, beginning with the Parsons Case of 1881, the Judicial Committee of the Privy Council has steadily enlarged the scope of provincial jurisdiction at the expense of the Dominion. Lacking a Marshall, Canada had instead a Watson and a Haldane, sitting remote in London and meticulously interpreting the British North America Act merely as a statute rather than as a constitution for a growing nation. From his appointment to the Judicial Committee in 1883 to his death in 1899, Lord Watson fixed firmly and widely the legislative powers of the provinces. In the eulogistic words of Haldane written after Watson's death, "He completely altered the tendency of the decisions of the Supreme Court, and established in the first place the sovereignty (subject to the power to interfere of the Imperial Parliament alone) of the legislatures of Ontario, Quebec, and other provinces. He then worked out as a principle the direct relation, in point of exercise of the prerogative, of the lieutenant-governors to the crown. In a series of masterly judgments he expounded and established the real constitution of Canada . . . Nowhere is his memory likely to be more gratefully preserved than in those distant Canadian provinces whose rights of self-government he placed on a basis that was both intelligible and firm."[4] The admirer carried on the work with impressive consistency. From 1911 until his death in 1928, Haldane, as the most influential member of the Judicial Committee, profoundly affected the achievements of Canadian parliaments in a formative period in the history of the community. Perhaps his most significant contribution, embodied especially in his judgments in the Board of Commerce Case and the Toronto Electric-Commissioners versus Snider, was to interpret the "property and civil rights"

[3] In the 18 years previous to 1937, there were only four cases of disallowance by the federal authority, in contrast to some 45 during the first 20 years of federation. The decline in use of the disallowance power set in at the turn of the century. The disallowance in 1937 of certain legislation of Mr. Aberhart's government has led to an appeal to the Supreme Court to determine the constitutionality of disallowance by the federal government. At the time of writing, the Supreme Court has not pronounced on the matter.

[4] Quoted from the *Juridical Review* of 1899 by F. R. Scott, "The Royal Commission in Dominion-Provincial Relations," *University of Toronto Quarterly*, January, 1938.

power, granted in Section 92 to the provinces, in such a way as virtually to make it impossible to invoke the Dominion residuary power except in cases of national crisis. The effect of this mode of interpretation has been to hamper, where it does not prevent, the federal government from legislating on great matters of national concern—such as the extensive regulation of competitive industry or the provision of social services—unless they are included specifically within one of the sub-sections of Section 91. In many cases of major importance, they are not so included, for the obvious reason that the Fathers of Confederation, acquainted only with a simple rural economy and a philosophy of *laissez-faire*, never foresaw and hence did not provide for the necessities of a modern and complex industrial state. Even the regulation of trade and commerce, which comes within section 91, has been so whittled down in meaning by the Judicial Committee that it fails to insure a control of commerce in the wide and genuine sense of the term.

The method of applying rigid rules of statutory interpretation to the British North America Act, with its cumulative effect of giving virtually the residue of power to the provinces, has been further exhibited by the Judicial Committee in its judgments on Mr. Bennett's reform legislation —Canada's attempted counterpart of the New Deal. Here again it jealously guarded property and civil rights within the province, even to the extent of declaring *ultra vires* three statutes based on draft conventions of the International Labor Organization and enacted by the federal government on the assumption that the Dominion had exclusive jurisdiction in implementing the treaty obligations of Canada. Canadians have now to accept the hard and rather embarrassing fact that the Dominion has no such exclusive jurisdiction. They are told, in the somewhat mixed metaphor of Lord Atkin in the judgment, that "While the Canadian ship of state now sails on larger ventures and into foreign waters, she still retains the watertight compartments which are an essential part of her original structure." In brief, there are evidently treaties that only the provinces can implement in virtue of control over property and civil rights.[5]

The major crisis in Canadian federalism is, therefore, due simply to the fact that the national government, under the existing interpretation of its powers, cannot undertake those tasks for which it is best adapted. Apart from other results, such inability has tended to complicate the financial relations of federation and provinces by throwing on the latter costly responsibilities which they have often not the financial capacity to carry.

[5] See F. R. Scott, "The Privy Council and Mr. Bennett's New Deal Legislation," *Canadian Journal of Economics and Political Science*, May, 1937; also articles by various authorities in the special constitutional number of the *Canadian Bar Review*, June, 1937.

Whereas the Dominion, under the British North America Act, may raise revenue by any mode of taxation—a provision in keeping with the assumption of the Fathers that the new burdens of expenditure would increasingly fall on the Dominion—the *provinces*, on the contrary, are restricted to direct taxation within the province and to licenses. This method of distributing the taxing power was doubtless satisfactory under the conditions of 1867. But the persistent advance of industrialism in Canada, the concentration of wealth in the metropolitan centers of Ontario and Quebec, the extension of social services, the coming of the automobile, and the pressure for expenditure on provincial roads have all had the effect of rendering the taxing arrangements of 1867 unsatisfactory. The less wealthy provinces are sorely hampered in obtaining a revenue adequate for the new and steadily rising outlays. Moreover, the difficulties of the provinces have been further complicated by the invasion of their taxation domain by the federal government—an invasion begun seriously in 1917 with the imposition of an income tax to help in meeting the financial necessities of the Great War. Hitherto, the bulk of the federal revenue had been derived from the customs. The income tax was levied only as a temporary measure, but it has remained on the statute book, cutting into the potential resources of direct taxation available to the provinces.

It is, however, insufficient here to consider merely the *law* of the Canadian federation. In the final analysis, the existing distribution of legislative and taxing power has become embarrassing because a new economic and social Canada has emerged since 1867—a Canada of centralized economic power wherein some 60 per cent of the total population and about 70 per cent of the net values of production are regionalized in two out of the nine provinces, Ontario and Quebec. More specifically, industrial production and financial management have been concentrated in that portion of the St. Lawrence Valley from Montreal in the east to Windsor, Ontario, in the west, including the metropolitan centers of Toronto and Montreal. Upon this area and its cities the outlying regions on the periphery—the Maritimes, the prairie provinces, and British Columbia—are in a restless economic dependence, enforced by the tariff and other expedients of the National Policy. The hegemony of the center readily perpetuates itself, for the concentration of population and wealth gives it political as well as economic weight, and it can determine by manifold pressures the major policies at Ottawa. The political predominance of Ontario and Quebec breeds an attitude of revolt on the periphery, where the constant complaint is that the tariff, and even the monetary, policies of the federal government, favor primarily the manufacturers of Toronto and Montreal, while imposing extra burdens on the fishermen of Nova Scotia and the wheat-growers of the prairies. The economy of the

periphery rests mainly on the production of raw staples for foreign markets, and, since the prices for these fluctuate greatly, the producers' income is often extraordinarily variable as compared with that in the central part of the Dominion, where industrial diversity brings a measure of greater stability. In a recent and excellent study of the economics of the prairie provinces, it is remarked of Saskatchewan that "from 1924 to 1928, the annual value of the provincial wheat crop was 240 million dollars, but from 1929 to 1936 inclusive yields have averaged only 60 per cent of the preceding five-year period, and farm prices of wheat about 56 per cent. Decline in revenues from the wheat crops have brought prolonged hardships. The 1929 wheat crop had about two-thirds of the value of that of 1928; the 1930 crop, two-fifths; the small crop of 1931, one-fifth; the fair crop of 1932, one-quarter; the crop of 1933, one-fifth; that of 1934, one-quarter; that of 1935, about one-third; and the 1936 crop, rather more than one-third."[6] Such variability in income is inevitably reflected in the standards of living, the difficulty of maintaining social services at a desirable level, and in the problem of retaining municipal and provincial finances in a solvent state.

At all times, but especially in a period of prolonged depression like that from 1929, the provinces on the periphery come to have a lower taxable capacity than those in the center. The yield of income taxes, succession duties, and corporation taxes in such provinces as Saskatchewan and Alberta is inevitably smaller than that of similar taxes in Ontario, because these frontier areas have developed and subsisted on borrowed capital, and because the amount of accumulated wealth in the possession of individuals is comparatively limited. Those who there acquire considerable wealth tend to transfer it and themselves to older communities. The head offices of banks, manufacturers, and the larger commercial houses are be found chiefly in the metropolitan centers of the East, and in the taxing of these Ontario and Quebec receive the lion's share.

Thus a fundamental problem of Canadian federalism is that of the wealthy and powerful center versus the poorer and less protected circumference; it is the problem of achieving such a balance of fortune between the two as to minimize discontent and to maintain cohesion within the country. Hitherto any satisfactory balance has been difficult to achieve, partly because of the distribution of legislative power, and partly because under democratic institutions the strong and affluent area, in successfully defending its privileged position, prevents balance. But under pressure the interests of the center have not been unwilling at times to make concessions. The Crow's Nest Pass Freight Rates Act of 1897 and

[6] W. A. Mackintosh *et al*, *Economic Problems of the Prairie Provinces* (Toronto, 1935), p. 26.

the Maritime Freight Rates Act of 1927 were in the nature of federal bonuses to primary producers in the West and East, respectively.

Unconditional subsidies from Confederation to the present illustrate even better how the representatives of Central Canada at Ottawa will grant millions of dollars to preserve peace with the East and the West. The Fathers of Confederation, reluctant to adopt the principle of unconditional subsidies, agreed in the Quebec resolutions to a "finality clause," whereby the payments to the provinces were to be rigid in amount—a "full settlement of all future demands upon the General Government for local purposes." They obviously shared the fears of Christopher Dunkin that "the provincial constituencies, legislatures, and executives will all show a most calf-like appetite for milking the one most magnificent government cow."[7] To pursue Dunkin's prophetic metaphor, the calves grew bigger and hungrier, and increasingly eager with the passage of time, for reasons already suggested, to continue the act of milking. The idea that the subsidies should be fixed in amount was soon dissipated. From Nova Scotia's "better terms" in 1869 to the present, they have been altered and increased as the financial necessities, or the political exigencies, of the moment demanded, despite a naive pretence at times that a final settlement was being made. The subsidies, indeed, have been a necessary if not satisfactory supplement to what has clearly become a defective financial relationship between the Dominion and the provinces, and in addition they have been informally used as a means of providing to the depressed portions of the periphery a compensation for their ill-fortune, whether due to federal policy or to natural forces.

But few would maintain that subsidies, unless supervised by a grants commission like that in Australia, are a satisfactory method of distributing federal funds or effecting a balance of welfare between the different regions. They have been too frequently suspected of being used to reward political friends and of being refused to political enemies. Party leaders in the provinces have occasionally spent more energy in agitating for them than in analyzing ways whereby provincial administration might be improved. They violate, moreover, what Professor Adarkar has called the "fundamental principle" of federal finance, that the responsibility of raising revenue and the freedom of spending it ought to go hand in hand.[8]

The maladjustments of the federal system, with all their varied implications in economic and social strain, indicate an unanswerable case for

[7] Dunkin's speech in *Parliamentary Debates on Subject of Confederation* (1865), p. 519 ff.

[8] A strong case against the unconditional subsidies hitherto paid in Canada is presented by J. A. Maxwell in *Federal Subsidies to the Provincial Governments in Canada* (Cambridge, Mass., 1937). See also B. P. Adarkar, *The Principles and Problems of Federal Finance* (London, 1933), Ch. 7.

amendments of the British North America Act. While such matters as the treaty clause, the incorporation and control of companies, and the trade and commerce clause require redefinition, the really crucial need, made evident by financial and other considerations, is that the federal government assume responsibility for maintaining and administering the major social services, including unemployment relief. This change, in addition to relieving pressure on the treasuries of the poorer provinces, can alone satisfactorily implement that philosophy of federalism which has recently been expounded with enthusiastic eloquence in the provinces on the periphery, i.e., that for the purposes of social service a Canadian should expect to be treated with equal consideration whether he lives in Charlottetown or Toronto. This, it is argued with some force, is a basic requirement for attaining national cohesion in Canada. Such a change might also logically involve a reallocation of taxing power, although the difficulties of this are evident. The recent contentions of the provinces of Manitoba and Saskatchewan before the Dominion Royal Commission that succession duties, corporation taxes, and the income tax might be taken over by the federal government, and then redistributed to the provinces on a per capita basis, comes easily from provinces whose income from this source is small.[9] But it will not be welcomed by Ontario and Quebec, where such income is large. Yet such a change would be an additional means of distributing a little more of the good fortune of the center among the remote and indigent members of the family, consistent with the philosophy of federalism already mentioned.

The practical issue of federal politics within the next few years will be, how much will the center concede by these or other means. While the dominant drive for changes in the mechanism of federation comes from the provinces on the periphery, there are, of course, certain strong interests in the center favorable to change. Such, for example, are those who press for social services, like the various units of organized labor. They are dissatisfied with the existing régime because of the acute difficulties in achieving an adequate coöperation between provinces and federation in the promotion and administration of social services. Hence they would bring most of the services under federal control. For many years, the Trades and Labor Congress of Canada, representative of most of the English-speaking trade unions, has gone on record in the annual meetings as favoring amendment of the British North America Act so far as such amendment is necessary for the national provision of social services. Certain commercial and manufacturing interests, too, are dissatisfied with the *status quo*, for to them it seems expensive and complicated to have

[9] See *Manitoba's Case: A Submission Presented to the Royal Commission on Dominion-Provincial Relations* (Winnipeg, 1937); and *A Submission by the Government of Saskatchewan* (Regina, 1937).

many official authorities taxing the returns of business or regulating its procedures.[10]

Against such interests must be set provincial particularism—that powerful sense of vested interest in the maintenance of existing provincial jurisdiction, found especially in the center. Particularist is the attitude of many local politicians in Ontario who would, on the suggestion of a radical revision of the British North America Act, seek to exploit popular emotion by raising a cry about "local liberties"; and they would not be reticent, needless to say, about how much Ontario at the present time pays in federal income taxes (Ontario and Quebec contribute about 85 per cent of the total). One can imagine how skilfully an astute political leader like Mr. Hepburn could exploit this fact on a political platform. But more formidable as a conservative force is the national attitude of French Canada. While I mean by French Canada principally Quebec, one must not forget the overflow of Catholic Frenchmen into other provinces (over 600,000), influencing in a manner favorable to Quebec political attitudes and action wherever they settle. On the issue of extensively revising the constitution, the French would, for evident reasons, be preponderantly opposed. As a minority national group, they are consciously on the defensive against absorption in the maelstrom of Anglo-Saxon life. They entered Confederation in fear and trembling, but have found in the British North America Act a sheet-anchor for cherished privileges, and any change tending to centralization of power in Ottawa should instinctively be viewed as a threat, however ill-founded their fears. Premier Duplessis of Quebec, in recently communicating to Premier King his hostility to any amendment of the constitution to facilitate the establishment of unemployment insurance, characteristically remarked that his province "considers that the best elements of stability and certainty are within the British North America Act and that it is much safer to preserve the stability of the constitution."[11] In the same newspaper is the report of a public speech in Montreal where Mr. Duplessis is quoted: "Speaking as a Canadian . . . , I say to those who appear to be wanting to centralize authority, 'hands off Quebec'." It would be easy to add to these remarks a legion of other like comments from French Canadian public men and newspapers within the last decade, when the economic crisis often raised the question of constitutional revision in English-speaking Canada. What

[10] The Canadian Manufacturers' Association submitted much evidence on the embarrassments of the existing taxation system before the Royal Commission on Dominion-Provincial Relations, January 17, 1938. The representative of the association claimed that an ordinary industrial company operating in all the provinces is required to file about one hundred annual returns to taxing authorities, involving much inconvenience and expense.

[11] The *Globe and Mail*, Toronto, January 11, 1938.

helps to make the particularism of the French most formidable is their religiosity and its product, a church all-pervasive in influence and in possession of a set of institutional privileges which it naturally seeks to guard. In brief, the political particularism which one finds reflected in the attitude of some in Ontario is reinforced in Quebec by ecclesiastical power, which is suspicious that any far-reaching revision of the structure of 1867 might have dangerous repercussions on the church. In any projected changes, it may be possible to placate these fears by formal guarantees; but at any rate the first impulse of the French is to stand pat.

Herein, therefore, are the elements of political struggle in the Canadian federation. Prophecy has been called the most gratuitous form of mistake, and I shall not risk it, other than by the safe remark that concessions of the kind mentioned by the center to the periphery are likely to be recommended by the present Dominion Royal Commission, and are likely also to be in some part accepted. In all the provinces of Canada, however much the discontent with the details of federalism, there is a deep sense that it is better to be within Confederation than out of it, and this fact in Ontario and Quebec will dictate concessions, as in the other provinces it will enforce contentment with compromises short of demands. Here is the basic rock amid the competitive play of forces in Canada during the next decade.

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Youth in the Dictatorships.[1] The years between ten and eighteen constitute a formative period in the lives of all. The mind is then plastic, and it is important to see that the wax gets the right impression. There have been, in the past, numerous youth movements which in some degree have attempted to pour youth into a national mould, but never before have there been official movements embracing the whole youth of a nation as now exist in Germany, Italy, and the Soviet Union.

The Hitler-Jugend was founded in 1926, when Hitler assigned Kurt Gruber the task of organizing a party youth movement. The first five years of spade work exceeded in results even the expectations of the most optimistic. Gruber, however, was in failing health, and in 1931 he was replaced by the young and enthusiastic Baldur von Schirach—a step which was in keeping with Hitler's maxim, *Jugend muss von Jugend geführt werden.*

[1] The writer has gleaned his facts from many sources, most notably from personal contact with the youth of two of the totalitarian states, and from unpublished notes in the private library of the Conservative and Unionist Central Office, Palace Chambers, Westminster, S.W.1., London.

The early Hitler-Jugend was but one youth movement among many. With the accession of Hitler to power in 1933, however, Schirach was able to start a process of incorporating sympathetic youth organizations and dissolving irreconcilable groups such as the Jewish and Catholic youth. This program of creating one unified National Socialist youth movement is now practically complete, with seven and one-half million youths and maidens enrolled.

The entire school and university system is behind the Nazi youth movement in a way impossible to conceive in a democratic country. The government has decided that there shall be no more than 30,000 students in the universities at any one time. Employment cannot be found, it is contended, for a larger number. A few professors have objected to their students playing at soldiery when they should be working at their studies, but such dissenters are few, and are likely to be rewarded with instant dismissal.

In the grade schools, it is not unusual for the pupil to have his or her interest in mathematics quickened by problems of this sort: "A squadron of 46 bombers drops incendiary bombs on an enemy city. Each aëroplane carries 500 bombs weighing 1½ kilograms each. Calculate the total weight of their bomb loads. How many fires will be caused if 30 per cent of the bombs are hits and only 20 per cent of the hits cause fires? Day bombers fly up to 280 kilometers an hour, night bombers up to 240. Calculate the flying time from Breslau to Prague."[2] This problem, with its fearsome interest for Czechoslovakia, illustrates, along with many similar ones, how completely educational institutions are dominated by the militarist state.

From ten until fourteen, a German youth is a member of the Deutsches Jungvolk which is, as it were, the outer circle of the Nazi youth movement. At fourteen, however, the youth may, if he has shown himself to be properly qualified, be promoted to the Hitler-Jugend, the inner circle. It is only those promoted to the latter group who will be eligible for membership in the Nazi party and for the higher offices of the state. Girls between the ages of ten and fourteen are enrolled in the Jung Mädel, in which organization they are given training in Nazi doctrine, household duties, and hygiene. Excellence in the Jung Mädel is rewarded with membership in the Bund Deutscher Mädel, the female counterpart of the Hitler-Jugend, of which it is a corporate part.

Although the Hitler-Jugend is an independent party organization only indirectly controlled by the state, it has had delegated to it many of the functions which in this country are ordinarily performed by governmental departments. Its headquarters, in Kronprinzen-Ufer, has been described as being nothing less than a ministry of youth, juvenile law, and hygiene.

[2] *The Times* (London), Feb. 20, 1937.

Like the Brown House in München, the Hitler-Jugend central office keeps a card index register containing the minutest particulars concerning each member.

In its structure, the organization is not unlike our own Boy Scout movement in that there are units corresponding to the cub pack, the scout patrol, and the troop. The Boy Scouts, however, are usually in charge of an adult, whereas the Nazi youths are invariably led by a youth of eighteen or nineteen years. The young leader may be responsible for as many as one thousand youths, but such responsibility is of an elementary and limited sort. A close survey of the organization shows that the policy of youth leading youth is offset by the bureaucratic nature of the central organization.

Since the Hitler-Jugend is based upon a structure of leadership, it is highly important that the leaders be trained to perform their work in strict accordance with Nazi doctrines. With this in view, several schools have been established for selected members of the organization. One of these with which the writer had a slight acquaintance stands on the edge of a lake some sixty miles from Berlin. The boys are trained in navigation, signaling, oarsmanship, and land maneuvers; and when they return to their homes, they are expected to teach to others what they have learned.

The activities of the Hitler-Jugend are primarily of a physical nature, although it is customary in most communities for the organization to meet twice a week during the school months to listen to lectures on such matters as the German irredenta, the "Red Beasts of Moscow," and the Negro-ized French. No attempt is made to recapture the care-free romantic spirit of the pre-war Wandervögel. To be sure, the new youth hike and enjoy outdoor life, but as one leader has said, "they do not squander their time in intellectual debates and literary circles, nor do they regard playing at soldiers the height of youthful happiness. The organization is not there for its own sake or for the sake of the young man or woman, nor is it the weapon of a definite class or caste. It is the community of the entire younger generation which feels its fate bound up with that of the nation and which wishes to have its share in the life and struggles of the nation." It would appear from this, and from what the writer has seen and heard in Germany, that the greatest service a young German can perform for his country today is to prepare himself to defend the new Germany.

The most important aspect of this great mobilization of youth is the aim of National Socialism to condition the young to everlasting obedience to the party by so molding his character as to make loyalty an inherent part of him. To reach this end, the movement has aimed to remove whatever stigma attaches to manual labor, to break down class barriers, and to destroy the dominance of intellectualism. However distasteful such a

movement may be to one born and bred in a democracy with a lengthy tradition of free speech, press, and religion, one cannot help recognizing the complete success with which the youthful Nazis are being molded into party adherents. Youths of Germany today are much less class conscious than their predecessors, much fitter physically, and much more anxious to see their country take its place in the sun.

The Italian youth movement, the Opera Nazionale Balilla,[3] unlike the Hitler-Jugend in that the latter was a part of its party's machinery for the foundation of a new régime, was established by law as an institution under the control of the Ministry of National Education in 1926. Under this early law, membership was voluntary; but later enactments have had the effect of making it compulsory for all boys between the ages of six and eighteen, and for all girls between the ages of eight and fourteen. In 1936, a yet further development was announced. A new organization, the Pre-Balilla, was established to provide Fascist training for all boys under six years of age. In Milan alone, 10,000 of these tiny warriors already have registered in and attended the new kindergarten.

The six-year-old Italian boy today is automatically enrolled in the Figlio della Lupa, becoming the "son of a she-wolf," and serving a two-year course in physical training before entering the scouts. At twelve, he enters the Balilla Riflemen, where he completes his Balilla training and passes into the Avanguardisti (Advance Guard, composed of boys between 14 and 18). The Avanguardisti is divided into two sections, one for riflemen (14–16), the other for machine gunners (16–18). Upon completion of his service in the Avanguardisti, the youth may become a Young Fascist, in which organization he must serve a three-year preparatory training if he would become eligible for party membership.

It was estimated that more than 5,000,000 young Balillas celebrated the tenth anniversary of the founding of the organization. The older youth, the Young Fascists, have, it is estimated, a membership of 1,270-435 cadets and 155,000 officers.

The local sections of the Opera Nazionale Balilla—battalions and legions (such are the war-like names given the groups)—carry on work equivalent to that performed by our school health clinics, make provision for holidays in camps, and arrange for technical and vocational instruction. It is fair to say, however, that the true *raison d'être* of the Italian youth movement is the preparation of a young generation in matters military and in matters political so as to will them to the defense of Fascist Italy. The young are required to study military science assiduously as well as to master Italian history, and the atmosphere everywhere can be described only as aggressively national.

[3] The name Opera Nazionale Balilla is derived from the name of a small boy who, in 1915, after a whole village had fled, threw a stone at the invading Austrians.

The favorite toys of the very young are model tanks which fire small corks, and tiny airplanes equipped with rapid-firing guns. As the boy progresses in years, his interests turn from the artificial to the real. Instructors with machine guns travel from district to district giving training, and even allowing twelve-year olds to fire the guns. Like the young Nazi, the young Fascist attends night drills in order to become accustomed to maneuvering in the dark. In the words of the handbook of the Opera Nazionale Balilla: "The youthful conscripts of the Fascist revolution receive the musket in the same spirit with which the youths of ancient Rome for the first time donned the toga of virility. It is one of the most beautiful celebrations of the party, certainly the most charged with meaning; that in which all the great ideals of Fascist faith palpitate and resound; that which brings the multiple souls of the youths nearest to the pure strong spirit of the Duce." Can the temper of a youth so reared be anything but militaristic?

The Komsomol, the Communist League of Youth, is to the Communist party and the state respectively what the Hitler-Jugend is to the Nazi party and the state. As dangerous as are observations based upon comparisons, it is impossible to study the German and Soviet movements without noticing a resemblance. This resemblance was made the more striking in April, 1936, when M. Kosarev, general secretary of the Komsomol, spoke of the aim of the Soviet youth movement as being the inclusion of every boy and girl in the Soviet Union regardless of his or her social origin.[4] All candidates are accepted as Little Octobrists (8–11), as are all candidates for the Young Pioneers (10–16). It is only for membership in the Komsomol proper (14–23) that selection is very careful. The Komsomol, then, may be thought of as the inner circle and the Octobrists and Pioneers as the outer circle.

As in Germany and Italy, there is to be virtual conscription of the state's youth. The Soviet dictatorship, no less than the Fascist, has entered upon a policy of militarizing its youth. At the tenth Komsomol Congress, in 1936, M. Kosarev declared that 1,259,743 youths had passed their full tests as snipers, 1,345,364 had qualified in anti-gas work, and more than 2,000,000 had secured first-class badges as evidence of readiness for labor and defense service. While exact figures are difficult to obtain, it is asserted by leaders of the Komsomol that millions of youths have passed examinations in military topography and parachute-jumping.

On March 3, 1937, the Soviet government issued a decree designed to bring all children into a pre-military service. For the very young, miniature weapons were made, and military authorities started at once to organize all youths of eight and upwards into units bearing names similar to

[4] *Daily Herald* (London), April 14, 1936.

those used in the regular Red Army. Juvenile regiments are already in the course of formation, and one is now ready for service under a sixteen-year-old youth named Romanoff, who is claimed to have an extraordinary aptitude for military strategy, and now enjoys the official rank of colonel in the army. This regiment even has its own political commissar and brass band as well as officers of youthful years with official army standing.

The farther one looks into these youth movements the more one is inclined to see in them serious implications for the future peace of the world. There is an old saying that as the twig is bent so grows the tree. What, then, is to be the future of a Europe and Asia in which over thirty million youths are taught to worship political régimes with the fervor of religious fanatics, are called upon to shoulder responsibilities unnaturally early, and are trained under semi-militaristic conditions?

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

The August issue of the REVIEW contained a preliminary announcement of the program for the December meeting of the American Political Science Association at Columbus. The Committee on Program (Clarence A Berdahl, chairman) now supplies the following additional information: (1) A round-table on Legislatures and Legislative Methods, led by Harvey Walker of Ohio State University, has been added. (2) The presidential address, by President C. A. Dykstra, will be delivered on Wednesday evening, December 28. (3) There will be two general sessions, one on Government Documentation, with papers by Cyril Wynne, chief of the Division of Research and Publication of the State Department, and James B. Childs, chief of the Division of Documents of the Library of Congress; and another dealing with the trends in American government since the publication of Bryce's *American Commonwealth* fifty years ago. At this Bryce session, which will be a dinner meeting, there will be papers by Robert C. Brooks on "Bryce on Parties and Politicians in the United States" and C. G. Haines on "Bryce and American Constitutional Federalism," and in addition short addresses by a number of other persons. (4) The three luncheon sessions will be addressed by Harold J. Laski, of the London School of Economics and Political Science; Governor Frank Murphy of Michigan; and Leon Henderson, executive secretary of the Temporary National Economic Committee. (5) There will be several special breakfast and dinner conferences, including a conference on political work led by W. E. Mosher. (6) The annual business meeting will be held on Friday afternoon, December 30.

Professor Hugh McDowall Clokie, of Stanford University, has been appointed head of the department of political science at the University of Manitoba.

Professor Harold D. Lasswell has severed his connection with the University of Chicago in order to accept a research position with the William Alanson White Psychoanalytic Foundation in Washington, D.C.

At the University of Michigan, Dr. Arthur W. Bromage has been advanced from an associate to a full professorship.

Dr. Grover Clark, well-known writer and lecturer on Far Eastern politics and since 1936 a professor at the University of Denver, died on July 18 at Charlottesville, Virginia, where he was attending the University of Virginia's Institute of Public Affairs.

Professor William Anderson, of the University of Minnesota, taught at the University of California at Los Angeles during the first term of the 1938 summer session.

Professor Harold S. Quigley, of the University of Minnesota, conducted a round-table on "The Far Eastern Crisis and American Policy" at the Northwest Institute of International Relations held at Reed College, June 19–29.

Professor Philip W. Buck, of Stanford University, taught in the 1938 summer session of the University of Oregon.

At the University of Southern California, Dr. Carlton C. Rodee has been promoted from assistant professor to associate professor of political science and public administration.

Dr. G. Lowell Field, who for the past three years has been teaching European government at Columbia University, has been appointed to an assistant professorship at the University of Texas.

Mr. Eldon L. Johnson, who has completed his residence work for the doctorate at the University of Wisconsin, has been made assistant to the chief of the planning and organization section of the Office of Personnel in the U. S. Department of Agriculture.

Dr. D. Barlow Burke has been promoted to an assistant professorship of law and government at the Drexel Institute of Technology, Philadelphia, and also has been appointed assistant district attorney in Philadelphia.

Professor Robert W. Duncan, of Colgate University, disappeared at sea from the liner *Normandie* on July 31. He was thirty-five years of age.

Mr. Lashley G. Harvey, who during the past two years has been doing graduate work in public administration at Harvard University, has been appointed assistant professor of political science at the University of New Hampshire.

Mr. Hilden R. Gibson, of Stanford University, has been appointed to an instructorship at the University of Kansas, and Mr. Boyd A. Marton to a similar position at the University of Idaho.

Dr. Peter H. Odegard, professor of political science at Ohio State University since 1930, has been appointed professor and head of the department of political science at Amherst College.

At New York University, Provost Rufus D. Smith has been made director, and Professor Theodore H. Skinner secretary, of a newly established division devoted to training for public service.

Professor Harold R. Bruce, of Dartmouth College, taught during the past summer in the New York State College for Teachers.

At DePauw University, Professor Harold Zink has been made head of the department of political science, previously presided over by Professor W. W. Carson of the department of history.

Professor J. G. Heinberg, of the University of Missouri, served as the representative of the public on the oral examining board for the selection of the high administrative personnel of the Missouri unemployment compensation commission.

After a year's study in Europe, largely at Geneva, Professor Bertram W. Maxwell has returned to his post at Washburn College. A textbook on international relations which he has written will be published in the spring by the T. Y. Crowell Company.

On invitation of the Secretary of Labor, Professor Marshall E. Dimock, of the University of Chicago, is spending part of the autumn in Washington, where he is reviewing practice and procedure in immigration and deportation proceedings.

Dr. M. B. Ogle, Jr., who has been associated with the political science department at Ohio State University, has become an instructor at Western Reserve University, and Mr. Donald Bishop, recently a graduate student at Ohio State, has received a similar appointment at Syracuse University.

While on leave from Washington and Lee University, Dr. Charles A. Barrell holds an instructorship at Ohio State University, from which he received his degree in August.

While continuing to serve as commissioner of revenue of Kentucky, Professor James W. Martin is conducting a seminar in tax administration at the University of Kentucky during the autumn semester.

Dr. Lyman C. White, who spent the past year in Europe collecting material for a book on private international organizations, has been appointed instructor in history and political science at North Central College, Naperville, Illinois.

At the University of Alabama, Mr. R. Weldon Cooper has been appointed assistant professor and Mr. Walter H. Bennett instructor in the department of political science. Mr. Cooper represents a new addition to the department; Mr. Bennett takes the place left vacant by the resignation of Professor E. G. Howe, who has accepted a professorship at Marietta College.

Among those who participated in an institute of public affairs at the University of New Hampshire, July 7, were Professors Thorsten V. Kalijarvi, University of New Hampshire; Orren C. Hormell, Bowdoin College; and Morris B. Lambie, Harvard University. The general subject of discussion was "The Problem of Taxation in New Hampshire."

The first Pan American Congress of Municipalities will be held at Havana, Cuba, November 14–19. Arrangements for participation of American municipal officials in the program are in charge of the American Committee for the International Union of Local Authorities, Dr. Louis Brownlow, chairman.

President Richard C. Foster of the University of Alabama has announced the creation of a bureau of public administration at that institution. The new bureau will undertake as its first research project a survey of municipal government and administration in Alabama. Joint sponsor of the survey will be the Tennessee Valley Authority. The staff of the bureau, which will have charge of the study, will work under the general supervision of an advisory committee representing the University of Alabama and the Tennessee Valley Authority.

The first annual institute of international relations at the University of Oklahoma, June 9 to 18, was directed by a committee of seventeen faculty members under the chairmanship of Professor Cortez A. M. Ewing. Four major subjects were discussed: the European political situation, Latin America, the Far East, and United States foreign policy. The ten speakers who appeared on the program were: J. Linus Glanville, W. Arnold-Forster, E. Raymond Wilson, Carleton Washburn, Watt Stewart, J. Fred Rippy, T. Takeuchi, Grover Clark, Otto Nathan, and Stephen Raushenbush. A cumulative total of 15,000 persons attended the sessions.

An International Legislative Information Center established recently at 1 Promenade du Pin, Geneva, Switzerland, publishes an indexed monthly volume of 500 to 700 pages entitled *Universal Digest of Laws and Ordinances*, edited in both English and French, and presenting the texts of laws, ordinances, decrees, etc., of all countries of the world issued during the preceding month. In addition, it runs an information and documentation service for the use of its subscribers, giving on request any information or undertaking any research on the legislation of any country desired.

In collaboration with a committee on municipal tort liability of the Municipal Law Section of the American Bar Association, of which Professor Edwin M. Borchard of the Yale University Law School is chairman, the Committee on Public Administration of the Social Science Research

Council is seeking to promote a number of studies in different cities of actual experience in the administration of tort claims against cities, in the hope that an analysis of past experience will help solve the administrative problems involved in the proposal of the American Bar Association committee for a wider waiver of the sovereign immunity against tort. These studies will necessarily involve the collaboration of city attorneys and students of public administration in the examination and interpretation of files and records of the claims division of the corporation counsel's office. A pilot study is now under way in Los Angeles under the direction of Leon T. David, assistant city attorney in charge of tort claims, formerly professor at the University of Southern California Law School, and Dean Emery E. Olson, of the University of Southern California. It is hoped that this study will serve as a guide for a number of others to be undertaken in coming months.

America Goes to War. By Charles Callan Tansill. (Boston: Little Brown and Company. 1938. Pp. x, 731. $5.00.)

In the opinion of the reviewer, this book will take rank as one of the most scholarly examples of historical research and writing that have been published in this country in recent years. It is based on the results of years of painstaking research and study of source material which has never before been examined by historians and much of which, in fact, has only recently become accessible to them. This includes a wealth of manuscript material such as the records in the German Naval Archives and Foreign Office at Berlin, those of the British Foreign Office at London, many official documents in the United States Department of State, the reports of the American neutrality board, the files of the Nye Committee, and the unpublished papers of statesmen and private persons who played an important rôle in the events which led the United States into the war, such as those of Lansing, House, Bryan, Kitchin, Choate, and others. Nearly every page bears evidence of Mr. Tansill's wide reading and careful research.

He starts out with an evaluation of the state of public opinion in the United States regarding Germany, Great Britain, and France in the years preceding the outbreak of the World War, after which he discusses in turn the various controversies which arose between the American government and those of the belligerents during the period of American neutrality. As to American opinion, he concludes that as regards Germany it was one of suspicion and distrust: dislike of German militarism and autocracy and distrust of the Kaiser, whom many Americans regarded as a bluffer and saber-rattling autocrat. In striking contrast to this sentiment toward Germany we have "a bright vista of Anglo-American amity"—a feeling of mutual cordiality and friendship toward the English. There was also "a very pronounced feeling of friendship" for France. This cordiality toward the English and the French and this distrust and dislike of Germany, which became even stronger after the outbreak of the World War, was "an important factor in determining the attitude of the American people during the first three years of the War" (p. 15). Mr. Tansill concludes that there was little doubt that American political leaders were largely pro-Ally (Vice-President Marshall was one of the few who "actually endeavored to preserve a semblance of neutrality"), and he quotes President Wilson, one of the most moderate of them, as having privately confessed in December, 1915, that he could not see how any "decent man knowing the situation in Germany" could help being "heart and soul for the Allies" (p. 600).

Although the government pretended to adopt a policy of neutrality,

Mr. Tansill thinks it was not such in reality, and it showed its partiality for the Allied cause in many ways: the refusal to put an embargo on the exportation of arms and munitions, which made the United States a base of supplies for the Allies, the extension of loans and credits to facilitate Allied purchases in the United States, the action of the federal reserve banks in assisting the Allies in their financial transactions, the attitude of the government in regard to the status of armed merchantmen, acquiescence in British infractions of international law, and in other respects.

Judged by the present standards of neutrality as set by the recent neutrality legislation, much can be said in favor of some of his conclusions, but it is well to remember that most of the policies of the United States government which he criticises as unneutral were not regarded as such in 1914–17. They were certainly not contrary to international law as it had been interpreted and practiced in the past, and while there was a small minority in the United States which then favored the policy which he now defends, the overwhelming mass of public sentiment supported the policy which the government adopted, as his book clearly shows.

Throughout, he is very critical of British policy in respect to such matters as its refusal to adopt *in toto* the Declaration of London, its "illegal" interference with neutral commerce and neutral mails, its blacklist device and various other alleged infractions of international law; and he reproaches the government of the United States for its attitude of timidity, truculence, and manifest sympathy for the Allied cause. The failure of the Administration, he says, to compel the British government "to grant far-reaching concessions with reference to the blockade and blacklist is an indication of the President's inability to grasp the realities of world politics" and stamped him as a "doctrinaire rather than as a man of action" (p. 547).

On the contrary, Mr. Tansill is sparing in his criticism of Germany for numerous acts even more illegal which shocked American public opinion, and which turned public sentiment against Germany and made a policy of neutrality as he understands it virtually impossible. Indeed, he appears to extenuate such acts as the sinking of the *Lusitania* by endeavoring to put the ultimate responsibility upon Captain Turner, upon the English government itself, and even upon the American government (pp. 281 ff.).

Dr. Tansill is probably not unaware of the fact that his view of belligerent rights and of neutral duty, and especially his view of blockades and continuous voyage, if Great Britain had been forced by the United States to accept it, would probably have given the victory to Germany. In fact, he expresses the opinion that the effect of an American embargo on arms and munitions on the fortunes of the war would alone have been "decisive" (p. 546), which was apparently intended to mean that it would have

entailed the defeat of the Allies. If this is what he thinks should have happened, it might not be inappropriate to suggest that he read the treaties of Bucharest and Brest-Litovsk, imposed in 1917 by Germany on Rumania and Russia respectively, as evidence of what might have been the fate of Great Britain and France.[1] It might also be well for him and other apologists for the German cause to consider, in the light of what has taken place in Germany during the past five years, what might have been the consequences to civilization in general of a German victory over the two remaining important European democracies. Newton Baker, it is believed, interpreted quite correctly American public sentiment on this point when he said: "The people of the United States shrank from contemplating the consequences of a German victory" (*Why We Went to War*, p. 20). That feeling explains why it was difficult for America to be neutral in the sense in which Dr. Tansill thinks it should have been. In this connection, it may be remarked that he reproaches the Allied governments for not being in sympathy with President Wilson's "earnest desire to usher in world peace through American mediation" in 1916, and he contrasts their "hostile attitude toward peace negotiations" with that of the German government, "which was anxious for the initiation of a peace drive" (p. 587). But they knew very well that it would be impossible for them to accept the terms which Germany would insist upon at that time, and that therefore peace negotiations would be useless. He calls attention in this connection to the terms which Hindenburg believed should be insisted upon, and these included the annexation to Germany of Luxemburg, the payment by Great Britain of an indemnity for German withdrawal from Belgium, the taking over by Germany of the railway system of Belgium, etc. (p. 613).

Mr. Tansill, it may be added, is distinctly critical in his evaluation of the character and motives of the men, both English and American, who in any way, in his opinion, were responsible for bringing the United States into the war. Sir Edward Grey was at times "disingenuous" in dealing with the United States; he was accustomed to "instructing" the Department of State in the history of American practice (p. 236), and it "seems odd," he says, that Grey's biographer (Sir George Trevelyan) should have required so many explanations to "justify the career of so honest a man" (p. 164). Page, of course, more English than American, always ready to sacrifice American rights and interests for the Allied cause, was "wholly unfit to represent the United States at London" (p. 148). Colonel House, whose amazing rôle in the drama which preceded American entry into the war is revealed in almost every chapter, was at the outset "completely captured" by the British "in much the

[1] As to the character of these treaties, which constitute "one of the most colossal frauds of modern times," see Hershey, *Amer. Jour. of Int. Law.*, Vol. 12, pp. 815 ff.

same way they have captured every important American who has in recent years partaken of British hospitality" (p. 209). From the first, House was confessedly unneutral and pro-Ally. The President was completely under his influence, and so was Lansing, only to a lesser degree. House sometimes "issued orders" to the Department of State (p. 426); he constantly "poured advice" into the ears of the President, endeavored to fill his mind with suspicion of German motives, and did his best to discredit Secretary Bryan in the eyes of the President. Had it not been for House's advice and influence, it is quite possible that Bryan in 1914 "might have found some formula to preserve peace" (p. 432).

Lansing, both as Counsellor and Secretary of State was throughout, we are told, admittedly anti-German and pro-Ally. This was due in part not only to his original dislike of the Germans and his suspicion of their motives, but also to the influence of the Anglophile, Elihu Root, who was his patron and friend, and who had done much to bring about his appointment as Counsellor and later as Secretary of State (p. 179). Lansing was too much inclined "to consult British sensibilities rather than American rights" (p. 150). Occasionally his notes to the British government contained cogent reasoning and a spirited defense of the rights of the United States, but generally his "heart was not in his task" (p. 600), and indeed his sincerity was questionable (p. 169). He succeeded admirably, we are told, in transferring the American art of camouflage in the conduct of war to the quieter atmosphere of diplomatic correspondence and in employing it to "delude his own countrymen into the false belief that he was insistent upon the protection of all American rights" (p. 168). Among other things, his opposition was responsible for the failure of the American government to issue a warning to American citizens against travelling on belligerent vessels—a warning which, if it had been issued, might have spared the United States from having been drawn into the War (p. 293). One of his "favorite occupations" was that of "pushing the President toward war with Germany" (p. 301), and he was "bitterly opposed to any peace moves by the President" (in 1916) because he was fearful that "a premature peace would be of aid to German autocracy" (p. 620).

As for President Wilson, among his faults were his amenability to the sinister influence of Colonel House, his allowing himself to be so "largely influenced by the legal maxims of Mr. Lansing" when he should have followed the wiser counsels of Bryan, and his being a doctrinaire when "America sorely needed a realist in the White House" (p. 305). More pacifist and neutral, especially during the last year preceding American entry into the War, than his official advisers (except Bryan), he was nevertheless pro-Ally at heart, preferred American prosperity to neutrality when it came to the matter of an embargo on arms, munitions, and allied loans, and too often his policy was to do nothing when action was required.

Among other things, he should have proclaimed an embargo on arms and munitions, banned loans and credits to all belligerents, warned Americans to keep off belligerent vessels, excluded armed merchantmen from American ports, and adopted a firmer position in respect to the Allied violations of international law.

But the President is absolved by the author from the charge of having been influenced by "big business"—at least during the later months of the War—and the efforts of the Nye Committee to prove the contrary were a failure (p. 657), as were its efforts to prove that the United States was drawn into the War "solely through the devious manipulations of certain banking houses" (p. 133). But there was, in the whole list of American executives, Mr. Tansill confesses, "no one who was a more sincere pacifist than the president who led us into war in April, 1917" (p. 606). "Surrounded by advisers who were eager for war, rebuffed by diplomats who had no thought of peace, President Wilson strove desperately to find some compromise which not only would put an end to the war then raging but would serve as the basis for a new world order. The defeat that attended his efforts was a tragedy whose evil results still stalk mankind."

The reviewer does not in general share Professor Tansill's opinions concerning the character and motives of the leaders on the Allied side whom he criticizes, any more than he accepts his interpretation of the law concerning belligerent rights and neutral duties, but the limits of this review do not permit a statement of the reasons for his dissent. However, apart from what the reviewer believes to be much undeserved criticism of those who were responsible in varying degree for our being drawn into the War, and from what he believes to be incorrect interpretations of international law, he regards Professor Tansill's book as a most valuable study, and one which reflects credit upon American historical scholarship.

JAMES WILFORD GARNER.

University of Illinois.

The United States and World Organization, 1920–1933, BY DENNA FRANK FLEMING. (New York: Columbia University Press. 1938. Pp. xiv, 569. $4.00.)

Dr. Fleming has long been interested in this subject—as every American citizen should be. He now inquires as to the leaders, policies, and omissions "which have almost killed the greatest promise ever held out to man," and the share of the United States in producing the incredible relapse of the world today. The volume results from study made under a Penfield traveling fellowship from the University of Pennsylvania.

The first two chapters tell the story of the rejection of the League of Nations by a Senate cabal, in the face of great popular demand for it.

The historian will record this as one of the most shameful periods of American history; Dr. Fleming uses strong words of condemnation (pp. 20–21), but his evidence, too, is strong. The defeat of the League he ascribes to the desire of the Republicans to regain power in Congress, and he does not emphasize the personal feelings of Senator Lodge. It is a story of deliberate intrigue continued under Harding, who would provide a better "association of nations," but did not. The Treaty of Versailles was accepted with all obligations extracted from it, and no responsibility. The League went on, in spite of our obstruction and efforts to kill it by "chilly scorn." We accepted no invitation to participate in its work, but negotiated separately with its members for rights, as in mandated territories—rights which (in the opinion of the reviewer) should never have been conceded to us. We obstructed the formation of the Health Organization, and did not coöperate in the suppression of the opium traffic. Economic statistics were contributed anonymously; our treaties became physically present at Geneva; communications from the League were discourteously unanswered.

Gradually, however, the pressure of community life became too much for us, and we began to participate, by back and side doors. The things being done by the League were things in which we were interested. Always the Senate must be side-stepped, even in matters unconcerned with the League. President Harding labored as anxiously with the Senate over his Washington Conference treaties as had Wilson; Senator Borah forgot his 1919 attitude in the Senate when the Kellogg Pact was before it. The Senate's record on foreign policy is a sad one. The cabal of 1919 Dr. Fleming calls "the most shameless and corrupt in the history of the nation" (p. 273).

In general, Dr. Fleming's book is a running narrative of our own internal political history and of the development of the League of Nations —not always closely woven together. It reveals the increasing interest of the American people in the League—the fact that they believe enthusiastically in what the League is trying to do. "How different," the author suggests, "the turn of events might have been if Wilson had not refused to permit Lodge and his associates any share in framing the great legislation of 1919"! (p. 92). It is the name of the organization that is feared, not its purpose; and worse, the Senate has taught us to avoid responsibility.

Dr. Fleming will be accused of partisanship, and of undue severity. He does not hesitate to take to task such persons as Secretary Hughes and Judge Moore. Perhaps his language is strong. But in the opinion of this reviewer he has substantiated his conclusions by the evidence which he presents.

CLYDE EAGLETON.

New York University.

The World Crisis. By Professors of the Graduate Institute of International Studies. (New York and London: Longmans, Green and Company. 1938. Pp. xii, 385. 10s.6d.)

In 1927 there was established at Geneva, under the particular inspiration and co-directorship of Paul Mantoux and William E. Rappard, the Graduate Institute of International Studies (L'Institut Universitaire de Hautes Études Internationales). Mantoux had been a professor at the University of London, chief interpreter at the Peace Conference, and for seven years director of the League's Political Section; Rappard had studied and taught at Harvard, had served his native country of Switzerland in numerous capacities during the War, had become the first Director of the League's Mandates Section and later a member of the Permanent Mandates Commission, was regularly one of the Swiss delegates to the League Assembly, and was professor and rector of the University of Geneva. Under such leadership, supported by the Rockefeller Foundation and the Canton of Geneva, located at the seat of the League with ready access to its staff and facilities, and loosely associated with the distinguished University of Geneva, this Institute had a unique opportunity and quickly developed into a most vigorous type of graduate school. The original faculty of four grew in ten years to thirteen, with a considerable number of others brought in for special courses or lectures each year, from the League Secretariat, from other high international offices, and from universities throughout the world. Many American professors have been associated with the Institute, including such men as Pitman B. Potter (now on the regular staff), James W. Garner, Quincy Wright, Bernadotte E. Schmitt, Frank P. Graham, Jacob Viner, Eugene Staley, John B. Whitton, and a number of others for shorter periods.

The volume under review was published to celebrate the first ten years of this Graduate Institute. It consists of a notable collection of thirteen papers, one by each of the thirteen members of the Institute's faculty, and the entire collection having a certain unity in that each paper deals with some aspect of the present crisis in international relations.

Under the heading of "Political and Historical Problems" there are five papers. Mantoux, drawing upon his intimate experience as director of the League's Political Section, gives a detailed account of the proposal for an international police force in connection with the Vilna dispute between Poland and Lithuania in 1920–21, and considers the last-minute abandonment of the scheme a lost opportunity for a display of authority and strength that would almost certainly have built up the prestige of the League, and whose failure was tremendously tragic in its consequences. Rappard reëxamines in his usual realistic manner the nature of the League of Nations by application of the historical method, and finds that in spite of defects, failures, and open violations of the Covenant, the

League has developed new institutions, new habits, and new principles which make it worthy of survival and almost certain to survive. Guglielmo Ferrero, writing on war and international anarchy, argues logically and persuasively a somewhat novel theory of war, out of which he offers an explanation for the wars of the past and concludes that the kind of war likely in the future, if not prevented, "would mean the downfall of Western civilization and the relapse of all mankind into a state of terrible barbarism." Maurice Bourquin, writing on "The Crisis of Democracy," examines learnedly such democratic concepts as "general will," "political power or sovereignty resides with the people," "constitutional liberties," "public opinion," and so on. And Pitman B. Potter makes a systematic and thorough critical analysis of all phases of international organization, coming to the somewhat optimistic conclusion that although there is somewhat of a crisis in international organization today, there is no general decline, and that there is good reason to hope for recovery of what has been lost.

Four papers deal with legal problems. Hans Kelsen writes on the separation of the Covenant from the peace treaties, examining that question from the purely legal point of view, indicating what precise steps may be taken to accomplish such separation, and making clear that such legal separation will by no means, and ought not, separate the League from the problems of the treaties. Hans Wehberg deals with the position of civil war in international law, with some special attention to Spain. Paul Guggenheim discusses the problem of League reform. And Georges Kaeckenbeeck, out of his experience as president for many years of the Upper Silesian Arbitration Tribunal, contributes a detailed account of the operation of that body and incidentally many shrewd observations on the nature and value of arbitration.

Finally, there are four papers on economic problems. Ludwig von Mises, writing on "The Disintegration of the International Division of Labour," examines the arguments for protectionism and argues earnestly for free trade as advantageous to nations and as a policy of liberalism which is in turn a philosophy of peace and international coöperation. Wilhelm Röpke discusses international economics. John B. Whitton, in a paper on "Peaceful Change and Raw Materials," makes a particularly excellent survey of the raw materials problem. And Michael A. Heilperin explains the crisis in monetary internationalism.

This summary by no means does justice to these papers, which together constitute a most extraordinary contribution to an understanding of the problems before the world today. The scholarly character of the Graduate Institute and its faculty is further indicated by the appendix, which lists the publications of the Institute, the studies prepared by its students, and the writings of each member of the faculty. Students of international af-

fairs will rejoice with the Institute in its first ten years, and will welcome this volume as a most fitting memorial to its achievements.

CLARENCE A. BERDAHL.

University of Illinois.

Geneva and the Drift to War. (*Problems of Peace*, Twelfth Series, 1937.) BY SIR NORMAN ANGELL, J. B. CONDLIFFE, AND OTHERS. (London: George Allen and Unwin Ltd., 1938. Pp. xiii, 234. $2.75.)

In August, 1926, the American League of Nations Association and the British League of Nations Union sponsored an Institute of International Relations in Geneva, at which for about a week there were lectures and discussions on current international problems by professors, statesmen, journalists, members of the League Secretariat, and others expert in these particular problems, the results being later published in a neat volume. The experiment proved so successful that the Geneva Institute has been held in August of every year since, and there has been produced that excellent series known under the general title of *Problems of Peace*, and containing probably the very best analyses of selected international problems as they arise from year to year.

The volume under review is the twelfth in the series, being the lectures delivered at the 1937 Institute, and is fully up to the standard previously maintained. Mr. Frank P. Walters, under-secretary-general of the League of Nations, contributes an introduction in which he quite unemotionally discusses the future of the League; Professor G. P. Gooch makes a useful survey of events during 1936–37, and also contributes an illuminating analysis of the problem of collective security; Edgar Ansel Mowrer, the Paris correspondent of the Chicago *Daily News*, writes feelingly on Spain; Dr. M. D. Mackenzie, of the League's Health Section, gives a brilliant and fascinating account of the health work of the League; J. B. Condliffe, then of the League's Economic Intelligence Service, now of the London School of Economics, makes a most lucid economic survey of the world; Carter Goodrich, United States labor commissioner at Geneva, discusses with intelligence and restraint the social and economic changes under the New Deal; Malcolm Davis, the European director of the Carnegie Endowment, analyzes the problems of population, colonies, raw materials, and, in general, the problem of revision or peaceful change; Jacques Kayser, vice-president of the French Radical Socialist party, and Andrew Rothstein, Geneva correspondent for the Tass agency, explain the French and Russian attitudes, respectively, toward League reform; and, finally, Sir Norman Angell discusses the problem of how League principles may be made into political realities and makes definite proposals for the formation of a peace front or peace *bloc*.

These lectures are of unusually even merit; all are sober, realistic, and expert examinations of the problems under discussion; and together they serve to explain the "drift to war" still going on; but also to emphasize that the Geneva machinery is still available and is likely to continue available as the most convenient means through which, if nations recover their sanity, this drift may yet be stopped.

CLARENCE A. BERDAHL.

University of Illinois.

International Sanctions. A REPORT BY A GROUP OF MEMBERS OF THE ROYAL INSTITUTE OF INTERNATIONAL AFFAIRS. (New York: Oxford University Press. 1938. Pp. x, 247. $5.00.)

In 1935, before the application of sanctions against Italy, the Royal Institute of International Affairs commenced a theoretical study of the character and application of international sanctions. Subsequently—in 1937—a group of the Institute under the chairmanship of Sir John Fischer Williams[1] completed the study in the light of the League attempt to impose sanctions against Italy. The result is the most detailed and comprehensive analysis of the theoretical possibilities and practical applications of international sanctions to be found outside the official publications of the League itself.

In an opening chapter, the Report considers whether sanctions should be punitive or preventive. It concludes that sanctions are intended by the League Covenant to be preventive in two senses: sanctions should be used to prevent the commission of an illegal act, or, failing that, should be used to prevent the "transgressor" from achieving his object.

There follow chapters, bristling with statistical and documentary material, on "Moral and Diplomatic Sanctions," "The Arms Embargo," "The Embargo on Raw Materials," "The Oil Embargo," "Financial Sanctions," "Refusal of Exports," "The International Boycott," and "Military Sanctions." No student of international affairs can fail to receive enlightenment from these informative and carefully prepared studies.

The most striking impression one gains from the book is a realization of the enormous and complex technical difficulties hindering a successful application of sanctions. It may fairly be said that few who cry "Let the League apply sanctions" have any conception of the technical problem.

[1] Other members of the group were G. M. Gathorne-Hardy, Major L. D. Grand, D. Graham Hutton, Commander Stephen King-Hall, the Marquis of Lothian, Dr. David Mitrany, and Rear-Admiral H. G. Thursfield. The group submitted parts of the Report for critical comment to a large number of authorities, including Sir Norman Angell, W. Arnold-Forster, Raymond L. Buell, Georg Cohn, Charles Warren, C. K. Webster, and Quincy Wright.

One can only wonder that fifty states could be persuaded to apply sanctions at all.

Sanctions did not prevent Italy from conquering Ethiopia, but the devastating effect on Italian commerce and finance of even a half-hearted —not to say dishonest—application of sanctions in 1935–36 will encourage the faith of those who still believe in the possibility of joint international action "against an infringement, actual or threatened, of the law." Had Italy been at war with a state of her own strength, says the Report (p. 208), she would have felt the pinch from those sanctions actually applied even more.

Aside from technical difficulties of application, however, the fundamental question with reference to future applications of sanctions is whether that "union of wills"[2] called for by Woodrow Wilson can soon again be obtained. It is not merely a question of the absence of the United States from Geneva; the will to use sanctions was weak even in the Geneva states. As Lord Hugh Cecil wrote to *The Times* of April 16, 1936: "We do not like the way the French treat the League as a sort of particular umbrella, valuable for keeping France out of the wet, but when not so needed, to be kept rolled up and used only for gesticulation."

HERBERT W. BRIGGS.

Cornell University.

Britain and the Dictators. BY R. W. SETON-WATSON. (New York: The Macmillan Company. 1938. Pp. 460. $3.50.)

Professor Watson has brought to this study of contemporary world politics an historical background which enriches the value of his work. An introductory chapter summarizes British pre-war policy, as developed in detail in his previous volume, *Britain in Europe*, while a further chapter discusses the World War and the Peace Conference. He reiterates the belief that statesmen of this epoch planted the seeds of world disintegration which are now bearing fruit. The Allies fought the war without reaching agreement as to a peace policy; and they entered the Peace Conference torn between imperialistic ambition and a desire to build a new world order.

As a result of the continuance of this contradiction, Britain and France today must play a furious game of power-politics against the two great dictatorships of Europe—Germany and Italy. On the other hand, Britain should come to terms with Russia. While there is much in the Soviet régime which he detests, Professor Watson nevertheless believes that "at present more than ever the interests of the two countries run parallel

[2] "The union of wills in a common purpose, a union of wills which cannot be resisted and which I dare say no nation will run the risk of attempting to resist."

and . . . it is not in the general interest of Europe that Russia shall be isolated, since this might drive her either to revive the waning influence of the Comintern" or to come to a direct understanding with Hitler.

Britain's most deadly enemy today, according to this author, is Fascist Italy. While he sees the possibility of working out a compromise with Germany, he thinks this is almost impossible in the case of Mussolini. After a brilliant characterization of Il Duce's personality, Professor Watson says that "Britain is the main obstacle" to the Italian ambition to dominate the Mediterranean, the Middle East, and even Africa. Mussolini has a poor opinion of British statesmanship, and believes that Britain is emasculated by pacifism and a decline in man-power.

As far as the German dictatorship is concerned, the world must face the fact that Nazi Germany has undergone a fundamental revolution. The author believes that Hitler will continue his policy of bluff until the point is finally reached when it will not be possible for the other Powers to yield. Then his bluff may have to be called and war may be the result. The one means of removing the danger is for Britain to make it quite clear that it will not tolerate any attempt to alter the map of Europe by force. He favors the organization of a "Peace Front" of the "peace-loving nations, sufficiently strong to deter any would-be aggressor from warlike adventure, and to hold out grimly until the disordered finances of the dictatorial states bring them to a more reasonable frame of mind." At the same time, he favors an Anglo-German understanding, provided its purpose is to return to some kind of international order. The Covenant should be detached from the peace treaties; their economic clauses should be declared inoperative; the war guilt clause should be redefined; the assertion that Germany is unfit to administer colonies should be withdrawn. He seems also to favor the return of colonies provided that Germany should give guarantees in regard to the treatment of native peoples, and that such colonies should not be converted into naval bases.

Admirable as is this book, it would have been improved had the author paid more attention to the underlying economic difficulties of Europe and the military strength of the contending groups. Such an analysis might have demonstrated that Italy is far too weak to threaten British Imperialism. Curiously enough, the least satisfactory part of the book deals with Central Europe, which is the author's specialty. He fails to mention what to the reviewer is perhaps the most fundamental mistake of the Paris Peace Conference, namely, acquiescence in the break-up of the Austro-Hungarian Empire without putting anything in its place. Although the war ended twenty years ago, the relations between Hungary and the Little Entente and between Poland and Czechoslovakia are extremely bad. The result is that there is no counter-force in Central Europe strong enough to resist German expansion. Likewise the author does not see the enor-

mous damage done when France made its alliances with Russia and Czechoslovakia. It is possible to defend these alliances on the ground that Germany would not enter the Eastern pact; but a more realistic diplomacy would have waited a few years, giving the new German revolution time to cool off before making alliances which inevitably divide Europe into two conflicting *blocs*. In the reviewer's opinion, the Barthou policy was one of the most serious mistakes in post-war diplomacy.

RAYMOND LESLIE BUELL.

Foreign Policy Association.

Japan in China. By T. A. BISSON. (New York: The Macmillan Company. 1938. Pp. xiv, 417. $3.00.)

The author of this book, whose "Reports" on the Far East in the series of the Foreign Policy Association have for several years been important aids to students, spent the year 1937 in China, Japan, and Manchoukuo. His first-hand observations supply information not available elsewhere. The book is, however, much more than a record of those observations. Taking as his point of departure the date of the Tangku Truce (May 31, 1933), Mr. Bisson gives, in five substantial chapters, a detailed account of the military-diplomatic maneuvering of the ensuing four years and of the subsequent military developments up to the spring of 1938. In other chapters entitled "The Revival of Chinese Nationalism," "China Achieves Unity," "Political Crisis in Japan," "Japan's Drive Toward Fascism," and "Japan's Home Front," he supplements the record of warfare with original and penetrating appraisals of internal political movements, in which the influence of economic factors receives extensive consideration. A chapter on contemporary conditions in Manchoukuo and one entitled "The Test of Strength," in which the assets, liabilities, and prospects of the contending states are weighed, complete the volume. A map of China, three regional maps, six illustrations, foot-notes, and an index add to its usefulness. The writing is somewhat journalistic, the general attitude of the author pro-Chinese.

In the judgment of Mr. Bisson, the responsibility for the outbreak of hostilities both at Lukouchiao and at Shanghai in July and August, 1937, rests upon the Japanese, and the attacks then begun were in accordance with the decisions of the Supreme Command and the cabinet in Tokyo. To the reviewer, the evidence presented on the Shanghai situation is less convincing than that on the Lukouchiao and subsequent clashes which inaugurated the invasion of northern China. Fuller evidence is the more necessary in view of the fact that previous Japanese efforts had been directed mainly toward detaching five northern provinces from the control of the National Government, an enterprise of sufficiently large propor-

tions and one which might have been presumed to be more likely of success if the campaign in central China were postponed. It is not desired here to controvert Mr. Bisson's opinion, but rather to suggest considerations calling for further evidence.

Necessarily, no judgment and few statements of fact which are written in the midst of so complicated a controversy may be taken as final. Nevertheless, such accounts as this are indispensable. Among the significant contributions of the book is its explanation of Major-General Doihara's failure in the five-province "autonomy movement." The section on the growth of fascism in Japan is a revealing analysis of the shift of the more conservative military leaders to extremist policies after the young extremists who attempted the *coup d'armée* on February 26, 1936, were disciplined. The decline in the Manchurian peasants' standard of living under *wang tao* and the increased effectiveness of the anti-Japanese armed forces in Manchoukuo are surprising aspects well substantiated by the author's interviews and observations. Possibly the most striking of his statements are those which explain the attitude of the Chinese Communist leaders toward Chiang Kai-shek after the kidnapping at Sianfu.

Mr. Bisson demonstrates by his careful attention to military, geographic, economic, and psychological factors that he is fully aware of the existing peril to Chinese statehood. His concluding sentences are the more worthy of credit: "The military struggle waged by the Manchurian volunteers . . . constitutes the northernmost front of a united war of liberation by the Chinese people. . . . the Japanese military . . . might read an omen in the stubborn resistance of the Manchurian population to the Japanese yoke. Such resistance will be multiplied ten-fold in the wide reaches of China to the south. In the end, it will turn the tide. . . ."

HAROLD S. QUIGLEY.

University of Minnesota.

Victorian Critics of Democracy. By BENJAMIN E. LIPPINCOTT. (Minneapolis: University of Minnesota Press. 1938. Pp. viii, 276. $3.75.)

The Case for Democracy. By ORDWAY TEAD. (New York: Association Press. 1938. Pp. x, 120.)

Not the least interesting of the paradoxes to be found in the history of Victorian England is in the realm of political theory. The age which witnessed the rapid growth of political democracy, and which gave birth to a vast literature defending that development, also produced six of the most eloquent critics of that democracy. Between them they "brought forward all the main criticisms of democracy that can be brought forward, except the Marxian." That they were men of exceptional ability is clear. That their writings on democracy, whether of the prophetic

strain cultivated by Carlyle, Ruskin, and Arnold, or of the scholarly character of Stephens, Lecky, and Maine, had little influence of any kind, and none at all in checking the democratic tide, is equally clear.

In general, it is correct to say that only where their criticism moved with the trend of the times did they exert any influence. Carlyle and Ruskin doubtless did a little to help persuade the middle class that there was need to modify its views on *laissez-faire* and to support legislation designed to alleviate the conditions of the workers. Had neither Carlyle nor Ruskin ever written a word on politics, it is probable that the course of social legislation in nineteenth-century England would have been the same. In most of Arnold's writings, he was as far removed from the main stream of his century as were Carlyle and Ruskin, or even Stephens, Lecky, and Maine. Only in his work for the reform of education can one discover any appreciable impact of argument upon the course of events; and Arnold had an intimate knowledge of some of the evils of the old school system. The other political writings of the prophets and the scholars seem to be products of the salon, the library, and the country house. Their authors, from the vantage point of their more favored positions, saw the lower class as deficient in ability and in morals. Somehow the appalling conditions in which that class lived were but the crowning evidence of its incompetence. They saw the mass as greedy, not realizing that if this were true it was so, partly because of the circumstances in which the many struggled for bare existence, partly because they, like the members of the more comfortable classes, were also men. To such higher critics it would hardly make sense to point out, as does Professor Lippincott in the course of his analysis, that government is representative not so much to get expert guidance as to secure that evidence about needs and wants without which no government can be, in the truest sense, efficient.

Professor Lippincott has chosen a subject of interest for the student of contemporary political controversies as well as for those who are concerned with the history of ideas. On the whole, his presentation of the arguments of the critics is admirably done. The arbitrary division of each essay into five divisions seems more mechanical than is compatible either with the vigorous style in which the book is written or with the skillful analyses which accompany the descriptive summaries. The concluding chapter is a very good, if somewhat repetitious, discussion of the merits and shortcomings of the critics. It deals largely with their failings, for the author is an unashamed believer in democracy, and his summing up is essentially an essay in defense of his own faith.

Mr. Tead's book is likewise a defense of democracy, but it is for a different group of readers. The author's statements that it is "an essay in examination of the inwardness of democracy with special reference to

its relationship in content and aim to certain truths of Christianity," and that the "central contention is that today more than ever the good Christian is a good democrat," indicate but do not quite define its nature and scope. For the most part, it is an emotional argument for a wider democracy. There is some attempt, however, to discuss certain of the problems growing out of such experiments as public ownership, collective bargaining, planning, and consumer coöperation. The discussion is never searching, but the book is intended as an introduction to such problems, not as a comprehensive study. A selected bibliography on the problems of democracy is appended.

BENJAMIN F. WRIGHT, JR.

Harvard University.

The Nationality of Married Women. By WALDO EMERSON WALTZ. (Urbana: University of Illinois Press. 1937. Pp. 151. $1.50 and $2.00.)

The subject of nationality was brought into bold relief at the end of the World War when questions of cession and transfer of territory, the repatriation of refugees and prisoners, the creation of distinct minorities and mandates, and changes of sovereignty followed in the wake of the worldwide conflict. Since that time, the problems of nationality have become of special significance to the individual, the particular countries, and the international community as well.

The Nationality of Married Women, by Professor Waltz, is a study of domestic policies and international regulations of nationality as these policies and regulations pertain to the status of married women. The author rightly takes the position that "three points of view are important in matters of nationality, those of the individual, of the state, and of the international society. Since individuals have no standing as such in international law, they must look to their rights and duties as members of particular states for justice and for settlement of difficulties in both the national and international realms."

The monograph is divided into six distinct but related parts: (1) "Equality of the Sexes in Nationality—The United States under Common Law with Certain Modifications"; (2) "Equality of the Sexes in Nationality—The United States under Statutory Regulation"; (3) "The Status of the Woman National of the Non-Equality State Who Marries an Alien"; (4) "The Status of the Foreign Woman Who Marries a National of the Non-Equality States"; (5) "Consequences to the Married Woman of Divergencies in the Laws of Nationality"; and (6) "The Nationality of Married Women in International Legislation." Numerous problems, questions, conflicts, and anomalies are discussed as they present themselves under each of these headings.

Emphasis is given the position taken by the author that "extraordinary divergent conclusions" to these intricate problems have been reached by scholars heretofore writing in the field of nationality; by the special groups immediately concerned, such as feminists and women's organizations, over methods of solution; and by the states dealing directly with the problems. The author then projects interesting solutions to the problems of the married woman's nationality, basing all of them on the premise that there must be achieved a reconciliation of the interests of those concerned—the individual, the state, and the international society. He then proposes that "the most desirable and comprehensive solution of the problems of the married woman's nationality would undoubtedly be accomplished through an international agreement which the nations of the world would accept and enforce." Such an international pact should, Professor Waltz maintains, provide two essential conditions: (1) independence of nationality, enabling the husband and wife to enjoy their own personal nationalities independently of the marriage relation; and (2) equality between the sexes in all problems pertaining to nationality so that the rules affecting the nationality of one spouse will apply equally to the other. The author believes that the time is ripe for the launching of an international convention containing these two essentials. However, since uniform regulation through an international convention is difficult and slow to obtain, Professor Waltz suggests that solutions by unilateral state action could be much improved. He then submits the following as basic principles on which the municipal law of the nationality of married women should be based: (1) independent nationality, in that the woman's nationality should not be changed by reason only of marriage; (2) special facilities for acquiring the nationality of a particular state should be available on bases equally applicable to husband and wife, in cases where one of them is already a national; (3) the nationality of the mother should be transmitted, *jure sanguinis* and as a result of naturalization, to the child under the same conditions as that of the father; and (4) in matters of nationality there should be no distinctions based on sex.

Professor Waltz deserves genuine commendation for his able assembling and handling of difficult and interlocked materials; for his cogent presentation of these materials in an interesting and connected story; and for the credit which he frankly and generously gives those who have heretofore contributed to this fascinating and important topic of nationality. The monograph is well documented, contains an excellent bibliography, and is worthy to take its place with the best literature available on the subject.

CATHERYN SECKLER-HUDSON.

American University.

Government Regulation of Transportation. By Emory R. Johnson. (New York: D. Appleton-Century Company, Inc. 1938. Pp. xiv, 680. $5.00.)

Transportation is likely to be among the very first of the great private enterprises of industrial America to mature into one of the principal forms of American socialization now in evolution. Its main feature is private ownership, initiative, and enterprise under comprehensive government regulation. This is the conviction that emerges for this reviewer as a significant by-product of Dr. Johnson's excellent treatise.

His book deals with only one phase of the transportation field, i.e., government regulation; but in the present period of widespread social and economic change, and clearly for many years to come, it is the most important phase of a problem that has plain implications for the whole of American business. In two broad introductory parts, he discusses the principles and objectives that are, or should be, the basis of government relations with the several transportation agencies; the relation of these agencies to each other, their employees, and the public; and briefly outlines the various government authorities, instrumentalities, and powers —chiefly state and federal—exercising jurisdiction over each form of transportation.

The main section of the volume is made up of four parts each devoted to a single transportation agency—rail, water, highway, and air. Except for the part on the railroads (more fully detailed than the others because more mature in the process of regulation), the treatment follows a general pattern in which specific sections deal with past and present government policies, aids, and regulation relative to the particular form of transportation under discussion. Interspersed throughout the volume are constructive commentaries and challenging queries on the nature of the problems involved and the kind of policies most desirable for the government to adopt in regulating transportation. Particularly helpful in enabling the reader to fix the main points of the subject in mind are the short summaries and the bibliographical references to current materials at the end of each chapter.

In the main, the approach to the subject is historical and expository. Intensely controversial matters are rarely mentioned, and where critical opinion is ventured, it is, with few exceptions, dispassionately expressed in the manner of one who has reached convictions after having probed long and deeply with instruments of sound reason, logic, and honest intention. Two main arguments are sustained throughout the book. One is that if the several transportation agencies are ever to function as parts of a coördinated national transportation system, all classes of carriers—by rail, highway, waterway, and air—must be brought within the same comprehensive scope of government regulation that now governs the railroads

after more than fifty years of experience, and which, in the Motor Carrier Act of 1935, has been applied to highway transport. The other argument discountenances the practice of setting up separate commissions, boards, authorities, and other special agencies for the regulation of each class of carriers. It maintains that all transportation agencies are inseparably interrelated; that they constitute one transportation system serving the public; that "the task to be performed by the Government is the regulation of transportation as a whole"; and that if serious conflicts in the policy of regulation and in the operation of carriers is to be avoided, regulation should be exercised by one government authority, preferably the Interstate Commerce Commission because of its long experience with railroad regulation and its demonstrated capacity (as in the case of pipelines and motor carriers) to handle the whole field.

Here is a book of wide utility. It may be used in its own field as a complete study of a maturing stage of transportation development in which a new keynote is heard: transportation in the nation's service. It may be used as an excellent illustrative work in the broader field of government regulation of private enterprise. In these days of redefinition and redistribution of political powers and jurisdiction (particularly as between the federal and state governments), the study will be especially valuable for those concerned with the problem of inter-governmental relations. For students interested in the wider scope of economic and social change, the book will serve as a significant indicator of the directions in which American thought and experience appear to be moving in the relations between private enterprise and public control.

GEORGE H. E. SMITH.

Yale University.

Twilight of the Kings. By JONATHAN F. SCOTT. (New York: Reynal and Hitchcock. 1938. Pp. ix, 340.)

It seems rather remarkable that an American historian, steeped in the republican tradition, should write a book which is essentially a plea for the restoration of monarchy. Yet this is what Professor Scott has done in the book under review.

In sixteen chapters, the author gives a lively summary of European history from the days of Renaissance absolutism to the current dictatorships and monarchic democracies of Western Europe. His account is popular and anecdotal, obviously written for a non-academic public, but it distorts historical values no more than is inevitable in the case of such a brief survey. The numerous anecdotes are not simply decoration, for the most part, but are included in order to throw into relief some aspect of the régime under discussion.

The fifteenth chapter treats of "Royalty in Shadowland," the post-war

exiles. Here the author begins to develop his thesis. In the existence of these royal "pretenders" he sees "the germ of a threat to dictatorship." The collapse of one of the existing despotisms might mean a restored monarchy, a consummation which he regards as desirable. The final chapter, the seventeenth, presents the argument of the book. Dictatorship is really a world menace to democracy, not only because the former leads to policies which threaten another world war, but also because many people in the remaining democracies find much to admire in the Spartan virtues of fascism or communism. It is the "challenge from without," however, that the author fears most. Another world war would probably force virtual dictatorships upon the remaining democracies and might bring about "the collapse of European civilization."

"In meeting this threatening challenge to peace and to its own existence, the cause of democratic liberalism, strangely enough, may find in royalty one of its most valuable allies. One of the best things that could happen to Europe would be the restoration of monarchs to certain countries of the Continent." Such a restoration, if sponsored by liberal democratic groups, would remove the dangers of a war caused by different ideologies. A Europe composed again of republics and constitutional monarchies would be a homogeneous Europe. But why monarchy? Why not democratic republics? Simply because the hereditary monarch, better than any other symbol, can bind his people together despite partisan differences. This is true in Europe for historical reasons. A break with monarchy has proved too sudden a break with the past. The king's ex-subjects have been given no adequate substitute for the old symbols of obedience and loyalty long associated with the monarchy. By repudiating kings, democrats have given their opponents a ready weapon.

The argument contains some truth. As Professor Scott points out, stable traditional governmental institutions and symbols tend to the preservation of order and stability in government. It may be that the Social Democrats in Germany failed, among other things, to give the populace enough pageantry of the sort which they had enjoyed under the Emperor and were again to have under Hitler. An old symbol (the king) may be turned quite easily to the uses of a new kind of government (representative democracy), and just as easily to the uses of fascism. The conservative influence of monarchy is fully appreciated by the British Conservative party. But the argument's essential weakness, in the reviewer's opinion, lies in the author's failure to appreciate the danger of fascism which exists not in its symbols but in its aggressive, barbaric nationalism and economic imperialism. A restored monarch in Germany, for example, could no more stop this disastrous trend than has Victor Emmanuel in Italy, unless the restoration were the by-product of an anti-Nazi revolution. If such should occur, it would certainly be supported by the resurg-

ent Socialists rather than by the landed gentry and upper middle class who would be most responsive to the royal symbol. Representative democracy is destroyed by the mutual intolerance of parties or the rise of a single intolerant party. Monarchy may or may not be among the symbols involved in the struggle. Surely Professor Scott has confused cause and effect. Britain, Sweden, and the other constitutional monarchies have retained their kings because they have retained their democracies and avoided revolution. The converse is not demonstrable.

A curious incident was reported in the press not long ago. Certain Communists and British Fascists stopped fighting in order to join in singing "God Save the King," while giving their respective salutes. This is evidence of the fact that, in England at least, even political extremists realize the advantages of preserving ancient symbols of national unity so long as these are popular. But it is evidence equally of the fact that the existence of monarchy is no sufficient guarantee against revolution.

MORLEY AYEARST.

New York University.

Allgemeine Volkswirtschaftspolitik: Staat und Wirtschaft. By FRANZ EULENBURG. (Zeurich-Leipzig: Verlag für Recht und Gesellschaft A.G. 1938. Pp. 320.)

Professor Franz Eulenburg, formerly dean of the Berlin School of Commerce, is one of the outstanding students of economic policies in Germany, and his work on foreign trade, published ten years ago as Volume VIII of Max Weber's *Grundriss der Sozialoekonomie*, has made his name familiar abroad as well. The present volume is a general statement of the principles of state interventionism. Traditional German economic thought divides the body of economic doctrine into theory and policy. The latter owed its early advance largely to the impetus given it by the protagonists of the historical school, and gradually developed into a series of merely factual analyses of the relationships between the state and organized economic activities. Agriculture, transportation, social legislation, labor, commerce, foreign trade, etc., were the main topics in this departmentalized scheme of applied economics.

The significance of Professor Eulenburg's new work lies in the attempt to offer an integrated theory of all the complex phenomena arising from state intervention in business. Similar attempts have been made by Professors Wilhelm Roepke and Ludwig von Mises in the last decade, but in both cases their strong *laissez-faire* bias stood in the way of a more detached treatment. Professor Eulenburg, on the other hand, rarely bases his analysis on *a priori* preferences.

The leading texts on government and business in this country, too, are merely descriptive presentations of the various governmental activities

in particular fields like agriculture, housing, labor, etc. Professor Eulenburg's book, if it were put into English and adapted to American conditions, would be found an excellent addition to the existing literature.

In his introductory chapters, the author discusses the basic problem of value judgments in economic and political theory. As a student of Max Weber, he upholds the doctrine of *Wertfreiheit* in the social sciences, and thus defies the current official teaching in Germany according to which science is intimately bound up with race, blood, and the soil. He then takes up the regulative norms of political action such as power, morality, justice, and national culture. In the main part of the book, the author deals with the nature of the market economy and the kinds of frictions which lead to state intervention. He particularly emphasizes the new institutional pattern which has brought about structural changes in the market economy as conceived by the classical school. Unfortunately, Professor Eulenburg does not refer in his treatment of imperfect competition to the leading studies by Robinson, Chamberlain, or Burns.

The types of economic state action are divided by the author into regulation by decree, supervision, and direct state management. The objectives of public action may be the promotion of productive forces, the control over income and consumption, and the adjustment of supply and demand. In particular, the author notes the universal increase of public expenditures, which tends to transform the state into the most powerful factor in the economic process. This phenomenon is shown to emerge in totalitarian as well as in democratic societies.

The latter part of the book deals with planning, both as a problem of economic organization and as a political force. In Professor Eulenburg's opinion, the corporative type of planning as established in Italy and Germany is characterized by a set of new bodies which do not possess autonomy of any kind, but are mere tools of totalitarian war policy. A wealth of illustrative material leads the author to the conclusion that corporativism is nothing but an apologetic and hypocritical superstructure the function of which is the better to conceal the ruthless dictatorial powers behind the time-honored symbols of professional liberty and self-government.

WILLIAM EBENSTEIN.

University of Wisconsin.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

In the January, 1938, issue (Vol. 195) of the *Annals of the American Academy of Political and Social Science*, entitled "Our State Legislators" (pp. 204), students of legislation will find a very interesting review of the

workings of state legislative bodies. Brooke Graves, editor of the volume, has brought together political scientists, practical politicians, lobbyists, and outside observers in an attempt to explore the mysteries of state legislation. The chapters on structure, technical aids to legislation, and other non-personal matters admit of no controversy, since they are factual and are written by such well-informed experts as Henry Toll, Lloyd M. Short, Edwin E. Witte, and Mona Fletcher. From them one can obtain up-to-date material on sessions, numbers of legislators, compensation, committees, records, and legislative reference bureaus. It is when one enters the realm of evaluation of personal and group influences that one is impressed with the paucity of our knowledge. There is a distinct need for more studies in this field, using the newer techniques described by Dr. Fletcher and Garland Routt. The composition of legislative bodies has been studied on several previous occasions. In this volume, M. Louise Rutherford and John C. Russell examine typical legislatures with a view to determining the influence of lawyers and racial groups, respectively. The unsatisfactory conclusion is reached that existing data are too scanty to permit of any more positive decision than that lawyers are neither so numerous nor so influential as has been supposed, and that racial groups—particularly in New Mexico—persist in contending for power on the basis of nationality cohesion. Apparently, we are not yet in a position to say whether or not legislatures accurately reflect the "public will," and we do not yet know whether it is possible to describe the public and its interests in terms that will allow us to project legislative action against it. Some of the writers, such as the witty and urbane T. V. Smith, who is a legislator himself, plead for a more sympathetic attitude toward our lawmakers, who have been the butt of much unreasoning criticism. Others urge that the public be educated against propaganda, presumably of the sort inimical to their interests. Concise and forthright analyses of the problems of short sessions, "skeleton bills," "hijacked numbers," and unicameral organizations are made by recognized authorities. David Kurtzman is skeptical of the validity of local government representation before state legislatures and urges regulation, but the other writers handling the problem of lobbies are not at all sure that regulation is either possible or desirable. As to whether governors exercise any important influence on legislation, Leslie Lipson says that it depends upon the governor. One cannot expect, of course, any unanimity of opinion in a volume designed to gather various points of view. There is general agreement that legislators should be more highly professionalized than they are at present, and should be equipped with the best auxiliary services that modern times can afford. The reviewer does not care to question the methods of study employed by pioneers in this field, since it is undoubtedly true that we must know vastly more about those who make our laws and under what influences

they operate before we can say what are the ideal legislators, types of legislative bodies, and functions of legislation. In other words, this highly stimulating volume serves the purpose of emphasizing the opportunities for assignment of term papers, masters' dissertations, and special post-graduate monographs in the field of legislation.—Roy Victor Peel.

Professor Charles G. Fenwick, who moved from his special field of international law to edit the fourth edition of *Evans' Cases on American Constitutional Law* (Callaghan and Co., pp. liii, 1381) has performed a valuable service to teachers of political science by clearly picturing the American constitutional system. Admirably rearranged, the volume is now suited to full-year courses in constitutional law. It is usually the nemesis of editors that selection of cases for such volumes as this requires sound historical as well as legal and contemporary judgment. Professor Fenwick is to be congratulated upon his clear selection of standard historical cases as well as upon his timely inclusion of recent opinions. It is probably true that the so-called "New Deal Cases" will become landmarks in the development of our public law .Their inclusion under proper topical headings is a decided value both to teacher and student. A sense of the flux in the public law field, as well as of precedent, is an inescapable conclusion from the reading of the selected cases. This in itself would justify the volume. The replacement of the chapter on "Jurisdiction of the Federal Courts" is, in the opinion of the reviewer, a real contribution in the sense that the chapter as now placed sets the jurisdiction problem in its proper relation to the larger principle of separation of powers. Likewise, it seems desirable to locate the materials on territories and dependencies in their proper places within "The Powers of Congress" and "The American Constitutional System." Those who have taught classes in constitutional law will appreciate the discussion of the "Bill of Rights" under the specific chapter-heading of "Restrictions upon Congress." Perhaps this will aid the student in discovering the actual constitutional basis of his civil and political liberties. As a further teaching aid, the careful topical arrangement of the chapters on "Interstate and Foreign Commerce" and "Due Process of Law" is to be applauded. The fine discrimination and the teaching experience of a fruitful scholar are both clearly evidenced in this revision of a fine case-book.—Ethan P. Allen.

Among the books which the one hundred and fiftieth anniversary of the signing of the Constitution has brought forth is Miss Helen Hill's *George Mason: Constitutionalist* (Harvard University Press, pp. xxii, 300, $3.50). In this volume, the author has attempted to present the life of one who was "perhaps the ablest constitutionalist of the Revolutionary period." Mason, it will be recalled, was one of the five most frequent speakers in

the Philadelphia convention. Inasmuch as the only other biography of Mason, now out of print, was written almost fifty years ago, there is ample justification for this work. The book is divided into five parts: "Origins" (ch. 1), describing Mason's ancestry and early surroundings; "Man's Estate" (chs. 2–6), telling of Mason's activities as a young man, which were chiefly of a local significance; "Exponent of the Crisis" (chs. 7–8), presenting Mason's contributions to Virginia in the pre-Revolutionary period; "Building the New State" (chs. 9–13), the section of chief interest to the political scientist, discussing Mason in relation to the period from 1775–1789; and "Last Days," consisting of a single chapter. Unfortunately for the political scientist, Miss Hill's chronological approach embodies no attempt to systematize Mason's political philosophy. All too frequently it appears that Mason is the excuse for discussing historical events, rather than the chief objective being the portrayal of George Mason, constitutionalist. For example, in considering "Western Ventures" (ch. 6), Miss Hill devotes some ten pages to the Ohio Company and only a few scattered remarks to Mason's relation to it. A similar criticism may be made of many of the succeeding chapters. Surprisingly little consideration is given to Mason's refusal to sign the Constitution (pp. 210–11). There is an appendix of thirty-two pages in which original and secondary sources are ably discussed, and much-needed additional notes are to be found.—W. O. FARBER.

Douglas H. MacNeil's *Seven Years of Unemployment Relief in New Jersey, 1930–1936* (Washington: Social Science Research Council, pp. xii, 307) is the first study sponsored by the Social Security Committee of the Social Science Research Council tracing the development of depression relief policies in a single state. There are twenty-two chapters, each treating very briefly an important aspect of the state's experience with unprecedented relief burdens during these turbulent years. For students of government, the most interesting feature of the study is the case made for the transfer of municipal control over general, non-categorical relief services to the county on the ground that the county in New Jersey is more nearly than the city an economic and social entity, or "true" community. The general conclusion would seem to be that public assistance in New Jersey is now right back at the point from which it started in 1930, namely, the traditional, Elizabethan poor law; and that this unfortunate state of affairs is quite ironically the result of the fact that the great bulk of emergency unemployment assistance is being handled separately by a generous national government. Were the W.P.A. to be abandoned and its functions turned over to the state, the feeble, out-moded overseer-of-the-poor system would undoubtedly collapse overnight—and this time probably for good. Mr. MacNeil's monograph is essentially a piece of

statistical reporting, replete with tables, graphs, and charts, but generally lacking both in critical analysis and in constructive suggestion. The reviewer has the impression that where the statistician has ended the political scientist should begin. Here are the factual materials upon the basis of which a public welfare study of real constructive value could be made.—PAUL T. STAFFORD.

Monetary Policies of the United States, 1932–1938 (Columbia University Press, pp. xv, 198, $2.75), by James Daniel Paris, presents the legislative data concerning changes in the monetary system during the period of the great depression. In an appendix are several chronologies relating to gold, silver, and other coins and currency. There is also a reprint of the laws and executive orders from 1932 to 1934. These are excellent for ready reference. In the first six chapters, the author describes the underlying conditions during the Hoover administration, the Rooseveltian policy regarding gold, silver, federal reserve notes, greenbacks, and other currencies. While this portion of the book is primarily descriptively analytical, the author shows his belief that most of the changes affecting gold and silver were of little worth. He is sympathetic with the simplification of our paper currency. When, however, he discusses the relation between monetary policy and fiscal policy, such as financing a deficit by currency issues, he says: "This is a rock upon which any fiscal and financial system will come to wreck" (p. 102)—a generalization which should be further analyzed. In his final chapter, Mr. Paris makes an appraisal of monetary policies. He attributes them to pressure groups and says: "One cannot complacently condone the brushing aside of expert and studied advice, and the acceptance of counsel from minority groups, all of which have an axe to grind. That the present Administration has been especially prone to accept such biased advice" (p. 103), he thinks is apparent. This contrast between "experts" and "interests" is hardly correct. True, I believe, Roosevelt accepted the wrong kind of experts, who led him astray upon monetary policy and caused him to do many foolish things. But he accepted the wrong experts because they seemed to have a policy designed to serve the "interests" of the debtors, the unemployed, the farmers, and the like. They were "expansionist" experts. The other experts were "deflationists." Both were wrong. Few in either group favored Senator LaFollette's five billion dollar public works program, and few of them spoke highly of Mr. J. M. Keynes' international public works program. Roosevelt began as a deflationist, and when he reversed and began to inflate, instead of simply spending money on a grand scale, as he subsequently did, he thought he could achieve prosperity by currency manipulation. This view proved to be just as fallacious as the "orthodox" view that what was necessary was the "gold standard" and "sound" banks.

In view of the past few years, both of these views appear to place an undue amount of faith in the possibilities of recovery inherent in the economic system. It now seems that the basic problem is that of maintaining a stable rate of investment. But this view has gained acceptance only recently.—WALTER A. MORTON.

Though written primarily for college students, Lois MacDonald's *Labor Problems and the American Scene* (Harper and Brothers, pp. ix, 878, $3.50) is much more than a conventional text for a course in labor problems. It is undoubtedly admirably fitted for that use, but in addition it will prove immensely interesting to the general reader who seeks a well written comprehensive survey of the problems facing the wage-earner in the present American scene. The institutional setting is well treated in two sections entitled "Workers in their Communities" and "Workers on Jobs." A section on "Workers in Machine Industry" does a competent job of summarizing such standard topics as unemployment, wages, and living standards, hours of work, etc. Then come two hundred pages on the labor movement. To the reviewer, this is the outstanding section of the book. The chapters on the C.I.O.-A. F. of L. controversy are rapid-moving narrative of a high order. The thoughtful analysis of the functioning of unionism is not based exclusively on books. It breathes a first-hand contact with living men and women in the labor movement. But it is no mere reporting of what such people say and do. This material has been refined by the mind and knowledge of the scholar to produce a series of closely packed and immensely illuminating chapters. The concluding sections on "Labor and the State," though treating adequately the topics usually included under such a heading, are much less outstanding, and contain a number of minor errors. One quotation used in this section should be noted. Two paragraphs written by a student in a workers' school describing personal experiences under an injunction are worth many pages on why labor objects to this form of legal action. This quotation is illustrative of much of the documentary material skillfully used throughout the book; namely, many direct quotations from workers and employers and their own publications. While clearly showing her own point of view (in favor of the C.I.O., for example), Miss MacDonald has written a scholarly work, supporting her facts and opinions with plentiful documentation. The book is enriched immeasurably by her teaching in workers' classes and her other contacts with the actual people and problems of which she writes. In short, it exemplifies the essentials of genuine scholarship in the field of labor economics.—ELIZABETH BRANDEIS.

The revised edition of Carroll R. Daugherty's *Labor Problems in American Industry* (Houghton Mifflin Co. pp. xxii, 984, $3.50) brings down to 1937 the author's comprehensive and essentially factual textbook on

labor problems. The book is especially useful to general readers as a compendium of facts on industrial relations. Part I depicts the psychological and historical backgrounds of our current labor situations; Part II, the problems dealt with, i.e., insecurity, wages, hours, industrial autocracy, and the bargaining weaknesses of sub-standard workers; and Part III, the attempts which have been made to solve these problems through collective bargaining, personnel management, and labor legislation. The particular virtue of the present edition is its analysis of the A. F. of L. and C.I.O. struggle and its account of recent developments in labor legislation, including the social security legislation. The author has endeavored to present an impartial and objective picture of the American labor-relations scene, combined with adequate analytical comment.—Don D. Lescohier.

The Federal Government Today: A Survey of Recent Innovations and Renovations (American Council on Public Affairs, pp. 119, $1.00) is designed by its publishers to give a comprehensive and authoritative picture of the changes in organization and functions which the national government has undergone during the past five years. At the invitation of the Council, Secretaries Hull, Ickes, Roper, and Perkins, and twenty-seven other federal officials discuss the operation, activities, and problems of their organizations. Harry Elmer Barnes furnishes the preface. There are four articles each on youth and public utilities; three each on agriculture, government machinery, labor, and public welfare; two each on social security, industry, housing, and financial reconstruction; and one each on foreign affairs, the public domain, transportation, and administrative reorganization. In general, these articles suggest summaries of a few of the principal features of the annual reports of the contributing authorities. Civil Service Commissioner Mitchell does not hesitate to denounce spoils and spoils tendencies, but for the most part the articles are not critical. Yet as summaries of the changes during the five-year period covered they are reasonably satisfactory. The writers seem to have made some effort to restrain their expressions relative to their conflicts with Old Dealers, although a few approach their subject with the fumes of powder still in their nostrils. Thus Chairman Madden of the Labor Relations Board writes of the "flat opposition" (p. 50) of industry to the Wagner-Connery bill, and Chairman Douglas of the Securities and Exchange Commission notes the "stubborn resistance" (p. 105) of bankers and others to the Securities Act. But none of the officials goes as far as Dr. Barnes, who declares that "one of the most admirable things about the New Deal is the enemies which it has made" (p. 9). On the whole, the Council has performed a worth-while service in publishing these articles.—Claudius O. Johnson.

In *Detroit Voters and Recent Elections* (Detroit Bureau of Governmental Research, pp. 66, $1.00), Donald S. Hecock, in collaboration with H. A. Trevelyan, presents the results of assiduous effort in establishing and correlating facts. If the study is long on data and short on interpretation, this is a safe procedure in probing electoral habits. Reference to this report is facilitated by excellent charts and maps. The varying size of the vote cast respectively in national-state-county, state-county, and municipal primaries and elections in Detroit during the past fifteen years is analyzed in terms of the candidates and issues. The vote in the 1937 municipal primary election, when the C.I.O. labor slate entered the nonpartisan primary, surpassed that of any other primary and any other election except national elections. Among the registered voters in 1938, foreign-born persons constituted almost as large a proportion as they did of the total population of the city according to the census of 1930. On the other hand, failure of foreign-born women to become naturalized was a partial explanation of the fact that women constituted only 37.9 per cent of the registered voters. The relationship between taxpaying and a sustained interest in voting was found to be not invariable. It is the vote of certain ward battlegrounds of the Democratic and Republican parties that may be expected to carry many candidates to victory or defeat in the city. This authoritative report is of value to all students of political parties and electoral problems.—A. W. Bromage.

Typical of the ever-increasing literature emanating from special schools and university presses as evidences of "busy work," designed to impress university authorities when promotions or increases in the budget are sought, is *The National Railroad Adjustment Board*, by William H. Spencer (University of Chicago Press, pp. ix, 65, $1.00). Such literature is often incidentally useful as a source of routine information on the subjects treated, and this study emanating from the University of Chicago School of Business falls within this category. The author gives a general survey of the statute; summarizes in more detail its provisions concerning the organization, personnel, jurisdiction, powers, and practices of the board; and annotates the statute with some rules and regulations formulated by the Board and some court decisions. The brochure also contains a statistical analysis and general description of the nature of the Board's awards and an account of the methods of enforcing awards.—Robert J. Harris, Jr.

Roger Sherman Boardman's study, *Roger Sherman; Signer and Statesman* (University of Pennsylvania Press, pp. vii, 396, $4.00) deals not only with the public and private life of this important "founding father," but also with numerous events of his time which helped to form the background of his career. There is extensive discussion of Sherman's public

services as state assembly delegate and judge, as mayor of New Haven, and as a noteworthy member of the bodies which promulgated the Declaration of Independence, the Articles of Confederation, and the Constitution of the United States. At the same time, the author devotes considerable attention to Sherman's family life, to his personality (characterized, for example, by a deep interest in religion), and to his private career as shoemaker, business man, and lawyer, and as a publisher of almanacs. Mr. Boardman gives recognition to Lewis H. Boutell's *Life of Roger Sherman*, published in 1896, and to a host of other materials which are mentioned in an extensive bibliographical note in one of the appendices. A large number of letters and documents consulted by the author, together with the present location or ownership of these where it could be ascertained, are listed also in a separate appendix.—MARTHA J. ZIEGLER.

A scholarly study (dissertation type) of an early nationalist and advocate of a "balanced economy" in a rather elementary form appears in Harold Hutcheson's *Tench Coxe: A Study in American Economic Development* (Johns Hopkins Press, pp. 227, $2.25). Coxe was a Philadelphia merchant who, unable to make up his mind on the Revolution, first supported Hamilton, and then Jefferson, after freedom was achieved. He favored a national bank, enthusiastically supported every move to increase American manufactures and technological advance, while at the same time affirming the basic importance of agriculture. As Hamilton's assistant in the Treasury, he is supposed to have contributed much to the famous *Report on Manufactures*. The volume is a useful but none too interesting contribution to politico-economic Americana.—HARVEY PINNEY.

In the fourth biennial edition of *Public Administration Organizations: A Directory, 1938–1939* (Public Administration Clearing House, pp. xi, 183, $1.50), useful, up-to-date information is made available on 2,067 voluntary national, state, regional, and Canadian organizations of public officials and employees and such organizations of lay citizens as affect the course and practice of public administration by coöperation or joint occupancy of particular fields of work. Although compiled according to the pattern previously used, the new edition, for the first time attractively bound in cloth, has been enhanced in value as a reference tool by the net addition of 135 organizations.—ELDON L. JOHNSON.

FOREIGN AND COMPARATIVE GOVERNMENT

As is stated in the foreword to "Social Problems and Policies in Sweden" (Volume 197 of *The Annals of the American Academy of Political and Social Science*, May, 1938, pp. ix, 301, $2.00), "the attention of the world is more and more being focused on the intelligent manner in which Sweden

is earnestly and successfully striving to achieve social justice and to make democracy work . . . " In the United States, however, a veritable myth has been created concerning what Sweden is doing. Attractively presented journalistic accounts have created the belief that this northern country is some sort of a Utopia, a "middle way" created as a result of deliberate economic planning. Swedish scholars visiting many of our universities under the auspices of the Delaware Tercentenary Commission have been struck with this romantic conception of their country, and have pleaded for more accurate information and saner appraisals by the United States.

The present volume will be of some assistance towards that end. Its aim is "to review the legislation and to describe the policies, agencies, and institutions which have been created to deal with social problems in Sweden." Edited by Professor Bertil Ohlin, of the College of Commerce in Stockholm, it contains nineteen papers prepared, for the most part, by men actively engaged in the administration of the activities they describe. Consequently, we have here an authoritative as well as informative description of the current Swedish social scene. Professor Roy V. Peel, of New York University, has added a seven-page bibliography of materials on Sweden which have appeared in English during the last two decades, for those who would pursue in more detail some of the topics treated. In some respects, as is true of much that is being written about Sweden, this issue of *The Annals* is one-sided. The reader must remember that several of the questions considered are as controversial as is the case in the United States. This is particularly true of the articles on unemployment policy and the financial policy during depression and boom, written by the ministers of social affairs and finance. Gustav Möller and Ernst Wigforss are staunch Social Democrats whose views of their own policies and programs naturally vary greatly from appraisals from other quarters. In *How Sweden Overcame the Depression* (Stockholm: Bonniers, $1.00), for example, Professor Arthur Montgomery relates a different story from that told here. From this point of view, it may be regretted that the Swedish editor did not himself more extensively comment upon some of the problems discussed, and that some conservative economist was not also invited to write a paper. Sweden's economist emeritus, Gustav Cassell, for instance, has consistently maintained that "economic planning" in Sweden has been just as planless as elsewhere and just as unlikely of success.—Eric Cyril Bellquist.

In *The Local Government Officer* (Allen and Unwin, pp. 231, 5s.), Mr. L. Hill, general secretary of the (English) National Association of Local Government Officers, has produced a little book which, like Gaul, may be divided into three parts. Chapters 2, 3, 4, and 5 are factual studies of the relation of the local officer to local government councils, of service condi-

tions (salary scales, pensions, health insurance, service contracts, sick leave, office hours, overtime, and the like), recruitment, training, and the work of "joint councils." The second group of chapters—6, 7, 8, and 10—are general essays upon the subjects: "The Study of Public Administration," "The Officer and Public Opinion," "The Qualities of a Public Servant," and "On Being Superannuated." Chapter 9, dealing with "The Future and the 'Hadow' Report," stands somewhat apart from the second category, being more of a critical examination of the recommendations contained in that "matured" document. The third part of the volume, and in some respects the most important, consists of the appendices. In them are set forth salary scales, general service conditions, designated posts in a large county borough, vacancies advertised, and model staff regulations. The first and third parts of the book, although written with attention to the provisions of parliamentary statutes, are enriched from another source—the replies sent in by 819 local authorities to a questionnaire on salaries, grading schemes, and service conditions. The student of comparative government may find nothing new in the essays designed to "place local government in its proper perspective," but he will wish to have the volume in his study as one of the very best reference works available on the English local-government service.—J. G. HEINBERG.

Another edition of William Bennett Munro's *The Governments of Europe* (Macmillan Co., pp. ix, 856, $4.00) has made its appearance. This is the third edition of a textbook that has enjoyed popularity in general courses in European government. Professor Munro has revised his material considerably and has taken cognizance of the many alterations in the European political scene which have occurred since the second edition of the work was published. These revisions notwithstanding, there remain some curious omissions which, unfortunately, cannot be enumerated here for lack of space. As in past editions, the author has devoted more space (365 pages) to Great Britain and the British Empire than to any of the other governments. French government is treated in approximately 200 pages, while Germany, Italy, and Russia are dealt with in 75, 60, and 44 pages, respectively. The lesser governments of Europe (Switzerland, the Scandinavian countries, Poland, Czechoslovakia, and Yugoslavia) are dismissed in 22 pages. A chapter (25 pages) on the government of Japan has also been included. At the conclusion of each chapter is to be found a selective bibliography of useful sources for further reference. The book is written in the very readable style which characterizes Professor Munro's work.—HARLOW J. HENEMAN.

The Soviets (Harcourt, Brace and Co., pp. xiii, 554, $3.00), by Albert Rhys Williams, is not a book for specialists. The reader who may be led

by the title to expect a careful analysis of the origins and operations of Soviet political institutions will go away disappointed. Mr. Williams has chosen to write another general survey of the Soviet way of life which runs the whole gamut from geography, natural resources, foreign affairs, economic and political organization to intimate details about daily life and social activity. The material is presented in the form of a catechism, with eighty-eight questions and answers, the latter partly in large type for readers in a hurry and partly in small type for those prepared to linger for illustration and elaboration. The exposition is unusually vivid and skillful; the narrative preserves a flow and smoothness in spite of the staccato scheme of organization, and it is interlarded with an amusing stream of anecdote which bears the imprint of the author's long years of residence in the Soviet Union. The point of view is panegyrical; the ideals and achievements of the Revolution are placed in the foreground; deficiencies and defects are dismissed as transitory "growing pains." A useful bibliography is appended.—MERLE FAINSOD.

In *The German Civil Service Act* (Civil Service Assembly of the United States and Canada, pp. 54, $1.75), Professor James K. Pollock and Alfred V. Boerner, of the University of Michigan, have published a fine translation of the comprehensive civil service code adopted in 1937, together with selections from the new disciplinary code and the revised salary schedules. The translators' preface (pp. 5–11) is especially valuable in calling attention to the salient features of the most complete personnel code to be found anywhere. The 1937 legislation applies to all German officials, central and local. Although reflecting the National Socialist *Weltanschauung*, it nevertheless has "a strong bureaucratic flavor." The civil service act is "a monument to long and notable personnel experience" and an indication of the "power of trained civil servants even under a dictatorship." As such, it deserves the attention of all students of personnel administration.—ROGER H. WELLS.

INTERNATIONAL LAW AND RELATIONS

L. P. Jacks, in *Coöperation or Coercion?* (E. P. Dutton and Co., pp. xvii, 153, $2.00), and Ernst H. Feilchenfeld, in *The Next Step: A Plain Man's Guide to International Principles* (Basil Blackwell, pp. 112), add two small books to the ever-increasing quantity of peace literature. Of *Coöperation or Coercion?*, Nicholas Murray Butler has said: "No better short and convincing argument for organized international coöperation in order to remove the causes of war and to promote prosperity has appeared on either side of the Atlantic." Jacks presents a convincing and well-reasoned argument (at least in the premises) that sovereignty and state coercion cannot be joined without resulting in the death of one or the other. A system of

collective security based on military power, sanctions, or forcible suppression must prove dangerous and unreliable because no sovereign state will willingly permit such coercive measures to be employed against itself. In order to succeed, the League of Nations must, therefore, dissociate itself from "the attempt to impose upon sovereign states a system of coercion which their nature as sovereigns forbids them to tolerate" (p. 91), and substitute instead powerful diversions or counter-irritants—indirect perhaps, and usually economic in character. The League must rely upon the good faith of its members; hence, it should transfer or divert its efforts to those fields, especially the economic and commercial, where traditions and habits of good faith are better established than in the military field (pp. 99–100). At the very crux of his argument, where, unfortunately, he makes out a somewhat less convincing case, Jacks suggests that "(1) all-round limitation of armaments and (2) economic coöperation on an international basis" be linked together and substituted in the international field for the "present disastrous preoccupation with the image and vocabulary of war" (p. 118). Such economic agreements can be good business for all parties, and if so, will be respected. Jacks suggests the adoption of the institution of mutual insurance and the creation of an international fund to further coöperation in the non-coercive field. As its subtitle suggests, Feilchenfeld's *The Next Step* is written in a more popular vein. Original in places, the author mixes a brew of realism and theory, with an occasional dash of wishful thinking. In their international dealings, Feilchenfeld mistrusts governments and politicians and cries out constantly for more incisive study, investigation, and preparation by commissioners who are clean, expert, impartial, decent, independent. The interdependence of world problems is stressed, and it is contended that "the only workable solution of international problems is . . . a coherent solution, that is a solution which has a remedy for each one of the interdependent problems" (p. 109). Numerous gaps now exist in international thought and action, and "The Next Step," as Feilchenfeld sees it, is the filling of these gaps.—IVAN M. STONE.

Violence, says Bart. de Ligt in *The Conquest of Violence* (E. P. Dutton and Co., pp. xii, 306, $2.00), is an integral part of the capitalist system. It is used to hold down the lower classes, to advance the interests of one capitalist nation at the expense of another, and to conquer and control backward peoples. Violence begets violence and bars the way to social liberty and justice. The only way to achieve real social liberty and justice is therefore to rid the world of capitalism and violence. But they must be eliminated through a non-violent social revolution. This is the major thesis which runs through a series of essays on war and revolution. The author discards the possibility of finding peace through the organization of

violence in the interests of society because, by definition, the capitalistic order uses violence in the interest of the "haves" against the "have-nots" (nationally and internationally). Moreover, since violence is bad in any form, it matters not whether it is used for the few or the many. The objective of the elaborate "Plan of Campaign Against All War and All Preparation for War . . . " which appears at the end of the volume, is clearly a social revolution. It goes well beyond the non-coöperation tactics of ordinary war resisters by advocating refusal *in time of peace* to make war materials and refusal to pay taxes. Since most products of modern economies are potentially war materials, and since all governments require tax proceeds to carry on their functions (even the non-violent ones!), both industry and government will come to a standstill. The immediate danger of war is simply used as a focus to speed the social revolution which, the author believes, must come before man can approach the heights of a social order built upon coöperation and non-violence. In his introduction, Aldous Huxley describes M. de Ligt's work as a "textbook of applied pacifism." The reviewer, however, fails to see what it is applied to. Why must there be a social revolution? What will the revolution achieve? How will the "new order" actually function? In what way will this program affect the *present* danger of war and revolution? Is it unreasonable for a reader to expect that an essay on war and revolution, written in 1938, shall bear some relation to the current world situation? These are some of the questions which occur to one who believes that social responsibility should be the first consideration in appraising any program for social reorganization.—WALTER H. C. LAVES.

National Control of the Manufacture of and Trade in Arms (League of Nations, Publications Department, Columbia University Press, agent, pp. 241, $1.75) presents information collected by the Secretariat in pursuance of a resolution by the Bureau of the Conference for the Reduction and Limitation of Armaments. The following states are considered: Belgium, United Kingdom, Czechoslovakia, Denmark, France, Germany, Italy, Netherlands, Norway, Poland, Sweden, Switzerland, Russia, and the United States. The volume opens with a general introduction explaining the scope and method of the study. Thereafter, the material relating to each state is given separate treatment, including, first, a summary, and second, extracts from legislation and regulations. An examination of these data reveals a steady trend toward systems of public control of the arms and explosives industry and trade, more especially since the World War. Furthermore, the tendency may be towards the nationalization of these sectors of the national economies. Aside from Russia, which has nationalized all industry, much progress in this direction has been made by France, Switzerland, and Norway, and somewhat less by the United States. The

degree to which nationalization has been achieved in Germany and Italy is not made clear, although it would appear that in Italy the government is gradually buying shares in the munitions industry. Stringent control both of manufacture and of trade does not, unfortunately, indicate any keen desire on the part of the Great Powers actually to limit and reduce armaments. On the contrary, it seems to be related, first, to vast increases in national armaments, and second, to a desire to use such control in the field of foreign policy. That the whole situation is becoming more, not less, dangerous and chaotic is illustrated by the Norwegian law forbidding exports of armaments to any but lawful governments, and by the Danish regulation refusing export licenses "if the war materials are intended for a country which is at war or in circumstances threatening war" (p. 68). That the whole prospect is gloomy does not detract from the value of this collection of information.—CHARLES A. TIMM.

Thorsten V. Kalijarvi, of the University of New Hampshire, notes that his book, *The Memel Statute; Its Origin, Legal Nature, and Observation to the Present Day* (Robert Hale Ltd., pp. VI, 256, 10s. 6d.) was written in 1935, but it was not published until last year. Subsequent events did not necessitate a drastic revision of the text, although they affected somewhat the author's general conclusions. The main account begins with the decision of the Powers in 1919 to take from Germany the Memel territory which for more than five hundred years had been an uncontested part of Prussia. The majority of the population was then, and is still, sympathetic to union with Germany. The successive governmental régimes under the control of the Allied Powers, but really under the domination of France, are described. Both Poland and Lithuania had their eyes on the territory, and it became a counterpart of disputed Vilna. The author examines in chronological order the various draft conventions for a governing statute discussed between the Allied Powers and Lithuania after the latter's *coup* in 1923. Finally, a special commission headed by Norman Davis was able in 1924 to bring about a settlement. Much of this ground is covered a second time in a discussion of the evolution of each separate article of the final statute. After rejecting a host of classifications, i.e., whether Memel is a state, autonomous province, *Staatsfragment*, etc., the author concludes that it is an autonomous territory. In an all too short concluding chapter, he makes note of the countless disputes between the Memellanders and the Lithuanian government, their appeals to the League and to the Permanent Court of International Justice. The situation as it is now is clearly untenable. Before it can be changed, a decision must be made as to whether the present régime is to be but a stopgap to complete eventual absorption into Lithuania, or whether autonomy was intended "to preserve permanently the people of the territory in the enjoyment of

their language, religion, culture, and other rights." Above all, it should be decided whether the League is or is not a protector of Memel autonomy. There is a good bibliography, but in view of the often detailed geographical references at least one sketch map should have been included.—E. C. HELMREICH.

At seven o'clock on the evening of March 11, 1938, Eugene Lennhoff, editor of the Vienna *Telegraph*, slipped into a car waiting at a side entrance to his office as a detachment of triumphant National Socialists entered the front door to seize editorial control. A few hours later, he had crossed the Hungarian frontier and thus escaped whatever fate the Nazis had intended for outspoken enemies of Anschluss. As a partial consequence, a stirring, microscopic record of what a competent Viennese journalist saw, heard, and felt on that fateful day is now available in *The Last Five Hours of Austria* (Frederick A. Stokes Co., pp. xxi. 269, $2.50). In addition, the author includes a transcription of daily notes for the four-week period from the Berchtesgaden meeting of February 12 to March 11. Although much of what transpired in government, diplomatic, and party circles must still remain Viennese hearsay, Lennhoff's direct testimony represents important documentary material for any study of this momentous political episode. Outstanding fragments of Lennhoff's evidence are: Schuschnigg was cunningly allowed to examine scheduled plans for the German invasion while waiting in an ante-room for Hitler at Berchtesgaden—plans which fully corroborated those previously seized by Viennese police in Austrian Nazi headquarters; Schuschnigg erred grievously in delaying too long propitiation of the shattered Social Democratic remnants; the Austrian police were fatally handicapped in dealing with any political emergency after February 12 because they served two masters—Schuschnigg and Seyss-Inquart; only about one-fourth of the Austrian population were Nazi sympathizers, but their organization was perfectly geared and disciplined; the Austrian army was powerless (without foreign aid) to resist a German invasion on March 11 because of the synchronized movements of the Austrian Nazis directed at strategic centers of control within the country. An additional odd item: at 10:30 that night was scheduled a radio performance of a musical *pot-pourri* entitled "That Happens Only in Vienna!"—WILLIAM P. MADDOX.

International Trade and Finance (Ronald Press, pp. 526, $4.00), by John Parke Young, is designed as a textbook for use in courses where the problems of both trade and finance are covered in one semester. The attempt to cover both subjects within the allotted pages naturally limits the adequacy of treatment of either of them, although the elementary and general principles of foreign trade and international finance are discussed

satisfactorily. In those institutions where advanced work is given in international trade and also in international finance, the book will be of very limited usefulness. Too much of its content is devoted to elementary discussion of material which students have opportunity to master in beginning courses in economics. For purposes of advanced courses, such elementary material should be covered briefly and more space allotted to the discussion of the complex problems involved in international economic relations. The volume does not add particularly to our knowledge of international economic and financial affairs. Its main merit lies in the success with which the author accomplishes his purpose "to present as simply as possible the economic and financial principles underlying international affairs, together with facts and descriptive material necessary to an understanding of international economic developments." This feature of the volume will make it useful to the layman and uninitiated student, who will find the simplicity and clarity of presentation a great aid in facilitating an understanding of this phase of economics.—NATHAN L. SILVERSTEIN.

Timely indeed is *Our Trade With Britain* (New York: Council on Foreign Relations, pp. x, 129, $1.50), by Percy Wells Bidwell, professor of economics at the University of Buffalo and for many years economist with the United States Tariff Commission. Prepared under the direction of a distinguished committee of Council experts, the book presents succintly a résumé of the trade of the United States with the United Kingdom and the British Empire in recent years, the tariff and commercial policies of the two countries, and the bases for the reciprocal tariff agreement now in process of negotiation. A successful agreement will probably necessitate some modification of the Ottawa system of imperial preferential tariffs to facilitate access of the products of American extractive industries to English markets, and a reduction of tariffs affecting our heavily protected manufacturers, and particularly those on raw wool and woolens (ghosts of Schedule K!). In spite of the fact that the Hull program has thus far merely "nibbled" (p. 48) at the American protective system, Professor Bidwell voices high praise for it as representing "the only substantial attack launched since 1914 on the barriers to international trade" (p. 48). Nineteen concise tables scattered through the text, eight fuller tables gathered together in an appendix (pp. 105–117), and a selected bibliography of British and American governmental and other publications (pp. 119–124) enhance the value of this estimable, clear-headed study.—HENRY S. REIFF.

The July, 1928, number (Vol. 198) of the *Annals of the American Academy of Political and Social Science* contains nineteen short papers deliv-

ered at the 42nd annual meeting of the Academy and edited by Ernest Minor Patterson under the title of "Present International Tensions" (pp. 1–142). Several papers, in each case, deal with the doctrine of self-sufficiency; trade barriers, with special references throughout to the Hull trade agreement program; "the haves and the have-nots"; population pressure; and propaganda. One paper each is devoted to the relation of the League to the Spanish civil war, and of the United States to the other American republics and to the Philippines. At a time when the presses of the country are loosing so much hysterical clap-trap and scavenged gossip about the international scene, these sober, dispassionate, authoritative discussions of the abiding problems which disturb our peace are doubly welcome. Most of the papers, of course, present materials and views familiar to the specialist, but enhanced by incisive critical analysis and expert judgment. Perhaps the most distinctive contribution is Ellsworth Huntington's paper, accompanied by geographic charts, on "Agricultural Productivity and Pressure of Population." Among the contributors are several who have rendered, or are now rendering, national public service.—HENRY S. REIFF.

International Studies in Modern Education (Oxford University Press, pp. xvi, 309, $5.00) results from a survey undertaken by Mr. S. H. Bailey at the invitation of the League of Nations Committee on Intellectual Cooperation. In the book the author presents an accurate account of postwar provisions made for research and objective study of international relations by the educational systems of the most important states of the world. The information set forth has been assembled from many sources, chief of which are the national reports received by the League of Nations Committee on Intellectual Coöperation. The author's examination of the subject proceeds on three main lines: first, the present status of the study; second, the obstacles encountered in its further extension; and third, certain suggestions as to the scope and form which it might suitably take at the different levels of education. Mr. Bailey finds that countries differ greatly in the position given to international subjects and in the manner of presenting them. In general, opportunities for the scholar are best in the United States. As to methods of study, three types are in vogue: the American, emphasizing the accumulation of facts; the French, stressing interpretations; and the British, which maintains a midway position. The author is not guilty of advocating instruction in international relations for the purpose of inculcating any particular set of ideas. Very wisely, he regards the subject as one to be treated objectively with the aid of all pertinent disciplines.—NORMAN L. HILL.

Although much of the information given is based on hear-say and hurried impressions, Oscar I. Janowsky's *People at Bay* (Oxford University

Press, pp. 193, $1.75) is a very useful discussion of the Jewish problem in Eastern and Central Europe, and particularly in Poland and Rumania, where the vast majority of the Eastern Jews (exclusive of Russia) are concentrated. The evidence that went into the making of this study consists in largest measure of personal observation and of "material secured in interviews with men and women who cannot be named." Documentation has therefore been reduced to a minimum. The problem is approached within the framework of the general political and economic situation. Among the causes of anti-semitism, the author includes heritage of the past, middle-class nationalism, the world economic depression, the Jew as scapegoat, the effect of German Naziism, and weakness and isolation of the Jews. Much space is allotted to "solutions," although one gets the impression that no solution is possible in the near future. The little volume is compact, convenient, and useful for checking contemporary events that are continually coming up in the daily news.—J. S. Roucek.

In the second edition of his *The Law of Nations* (World League for Permanent Peace, pp. xxiii, 640), Marcellus Donald A. R. von Redlich combines a legalistic treatment of such subjects as sovereignty and state equality with the optimism of a "sane pacifist." The organization of the book is quite different from that of the usual text on international law. There is, for example, a chapter on powers of Congress and one on amendments to the United States Constitution. More than a third of the volume is given to diplomatic and consular relations, and is based largely on well-known writers. With respect to existing international organizations, the author finds "not justified" the "erroneous" and "rather misleading" opinions that the League of Nations has been ineffective (p. 504). He submits that the League, the Permanent Court of International Justice, and the Permanent Court of Arbitration "represent to-day helpful unity as well as assure impartiality and justice" (p. 512), and concludes that the International Labor Organization has made "a most marvelous record in every respect" (p. 516).—Robert R. Wilson.

Recent developments in Hispanic America have necessitated revision and enlargement of texts dealing with its history. Graham Stuart, in the third edition of his *Latin America and the United States* (Appleton-Century, pp. 513, $4.00), has gone further. Not only has he included developments as recent as the Mexican oil expropriation of March, 1938; he has thoroughly revised and expanded the portions dealing with the first fifty years of independence by making extended use of Manning's *Diplomatic Correspondence of the United States: Inter-American Affairs, 1831–1860,* now in its ninth volume. Much more could be said in praise of the book. It does fail, however, in one respect: no clear picture is given of the de-

velopment of relations with Hispanic America as a whole; instead, each region is treated as though it were a separate entity. Some countries too, notably Paraguay, are badly neglected.—L. W. Bealer.

POLITICAL THEORY AND MISCELLANEOUS

Dare We Look Ahead? (Macmillan Co., pp. 190, $2.00), by Bertrand Russell and others, gives us six stimulating essays based on the Fabian Society lectures for 1937. In discussing "Science and Social Institutions," Russell says that the outstanding fact is the increase in "the manipulative powers of science," along with the increased power of government to do the manipulating. The major question, therefore, becomes that of whether government shall be democratic or authoritarian. Which kind will prevail, "it is impossible to guess." In the international field, as a result of increasingly destructive wars, he foresees world government under a single world state with a monopoly of armed power. Vernon Bartlett, writing on "The War Horizon," thinks war will not come in the near future, the reasons being, chiefly, the rearming of Britain and the probability that if Hitler risks new adventures he will have trouble at home as well as abroad. G. D. H. Cole writes convincingly of the "twist in the economic system" involved in intensive war preparations, and emphasizes the point that although rearmament brings about fuller employment during the "first phase," which involves providing new capital and plant for the production of munitions, nevertheless, when the "factory-building stage" is passed and the "second phase" arrives, the danger of a slump will have to be faced. Sir Stafford Cripps fears rearmament unless the working class is in control of the government, and thinks that the class struggle "is the most real and substantial factor in politics . . . today." In perhaps the most meaty and suggestive essay, Herbert Morrison writes in a realistic vein on the past and future of socialization in Great Britain. He argues that the program of the British Labor party must be conditioned by the fact that "the British are not likely to vote for nationalization of everything forthwith. . . . " The Socialist minister of the future must be a business man with a business head. Furthermore, no hard-and-fast pattern should be followed in establishing socialized institutions. Compensation is preferable to confiscation, on grounds of expediency rather than morality. Harold J. Laski closes the symposium with a timely warning of the need for tolerance in an era when all traditional institutions and values are being called into question. All of the essays bear significantly upon the current social scene.—G. Bernard Noble.

History of the Former Han Dynasty, by Pan Ku, Volume I, "The Imperial Annals," Chapters I–V, translated by Homer H. Dubs (Waverly

Press), is the first volume of a projected five-volume set, comprising three volumes of translation, one volume containing a history of the author, some notice of the Chinese commentators on the work, and similar materials, and lastly, an onomasticon or glossary. Dr. Dubs carried on his labors as a part of the program of the American Council of Learned Societies to make translations of the Oriental classics available in Western languages. The project was financed by the Carnegie Corporation. The student who lacks knowledge of the written language of China must perforce depend upon translations, and upon the worth of these translations depends the interpretation which the student gives to the facts contained in the original work. Dr. Dubs has admirably performed his task in giving a good translation. He has retained the flavor of the original Chinese, but nevertheless, by the judicious interpolation of the phrases and ideas which were left out of the original work because they were understood by the Chinese reader, he has made a smooth, easily read translation. Copious footnotes furnish the explanation for the interpretations given to the text, and, surprisingly enough, does not detract from the reading of the finished product. No student who desires to know the background of Chinese history, and who cannot read the originals, can afford to be without these volumes as they appear. It is a laudable task to attempt to fill the gaps in the English translations of the Chinese classics, a lack made still more noticeable by such translations in French as Edouard Chavanne's *Le Memoire Historique de Se-Ma-Ts'ien*—a work now unfortunately too difficult and expensive for the ordinary reader to obtain.—ANDREW E. NUQUIST.

The Public Assistance Worker (Russell Sage Foundation, pp. 224, $1.00), edited by Russell Kurtz, contains six chapters by as many writers, designed for the use of inexperienced relief workers. The essays include discussions of what public assistance is, who shall be granted public aid, problems of medical care, and methods of dealing with people in need. In a chapter entitled "Dealing with People in Need," Margaret Rich, of the Family Welfare Association of America, has presented an excellent statement of the purposes and methods of the case-worker in the field of public assistance. Among the long-range questions of policy, according to Arthur Durham, are: the place of category relief in the public assistance picture, the kind of organization desirable for administering public assistance, and the relation of adequate assistance to taxation. There are two striking emphases in the book: (1) only by the individualization of humans in need can the granting of public assistance be made effective; and (2) only as the community, largely through the interpretation of public assistance workers, understands the needs of relief recipients will reactionaries on the right and radicals on the left be restrained from in-

sisting upon unsound policies. The book has value both for the uninitiated relief worker and for the uninformed public.—HELEN I. CLARKE.

Ever since the publication of the first edition in 1875, Maxwell on the *Interpretation of Statutes* has ranked as the authoritative treatise on this subject. The eighth edition (London: Sweet and Maxwell, pp. cxii, 381), by Sir Gilbert Jackson, brings this great law-book up to date, but, like all prior editions preserves the original arrangement and general method of treatment. As Sir Peter Maxwell said in the original edition: "Its object is to present in some order the leading principles which govern our courts in the interpretation of statutes, with illustrations of their application selected as much as possible from recent decisions, in the hope that it may be useful not only to the legal practitioner, but to the numerous unprofessional authorities . . . on whom the task of construing statutes is imposed with increasing frequency." Because this method is still being followed, "Maxwell" remains a book of great value to American students of legislation, although it deals primarily with the interpretation of statutes in England and the British Dominions, with citations to American cases only in footnotes.—EDWIN E. WITTE.

In *Right and Wrong of Labor Relations* (University of California Press, pp. 86, $1.00), William N. Leiserson has drawn upon a wealth of information gleaned from study and experience to dispel some of the myths of labor relations current among orthodox economists, labor-baiting editors, and self-righteous industrialists "to whom God in his infinite wisdom has given the control of the property interests of this country." Instead of an abstract labor problem, created, and subject to solution, by economic law, Mr. Leiserson sees a host of psychological and social problems arising from the complex relationships inherent in a highly regimented industrial army. Much of the "wrong" in labor relations is attributed to industrialists who violate the legal right of labor to organize and to bargain collectively, thereby giving rise to organization strikes, the most common type since 1933. The author discusses the responsibility of labor unions and closes by outlining a program for government in labor relations.—ROBERT J. HARRIS, JR.

In her *James Wilson and the Natural Law Basis of Positive Law* (Fordham University Press, pp. 40, $0.75), May G. O'Donnell has done her subject injustice. To establish the thesis that Wilson's political philosophy was more penetrative—and more Thomist—than has usually been stated demands fuller treatment than the pamphletary, and deeper consideration than is shown here in the almost exclusive reliance upon excerpts from Wilson's published writings. And to contend that, apart from Wil-

son, "throughout the English-speaking world, the idea of *obligation* in the political field was as strange as a fall of snow in the tropics" (p. 18) shows unwarranted neglect of contemporaneous political literature. Perhaps Wilson's originality has been underestimated, but proof thereof requires much more than is presented in this sketchy brochure.—ALLAN F. SAUNDERS.

Everyone would probably agree that unselfish and enlightened citizens are the only sound basis for popular government. *How to be a Responsible Citizen* (Association Press, pp. x, 203), by Roy V. Wright and Eliza G. Wright, is intended as a handbook to guide citizens in doing their "duty." A superficial examination of representative democracy, suffrage, and the effect of the machine age on government sets a background against which are painted the things a citizen should do—register, join a party, vote, study political leaders and learn how to control them, etc. The book includes a bibliographical index and a subject index. Although it contains little that is new or original, there are suggestions at the end of the chapters which should be useful in secondary schools as well as in institutions of higher learning, especially in courses in civics, citizenship, and political parties. ROBERT W. MCCULLOCH.

The gathering of people in urban areas presents many social, political, and economic problems. In *Urban Sociology* (Macmillan Co., pp. xvi, 742, $3.75), E. E. Muntz treats some of the more important social problems arising from the growth of cities, such as the readjustment of rights, duties, and personal freedom where people live together in compact communities. Communal responsibility, which is met by governmental action, is discussed for four important problems which must be met in cities, namely, housing, health, education, and recreation. While the approach to these problems is primarily sociological, the book will be of interest to the political scientist and all other persons who are concerned with the problems presented by urbanization.—CHARLES M. KNEIER.

RECENT PUBLICATIONS OF POLITICAL INTEREST
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AMERICAN GOVERNMENT AND PUBLIC LAW

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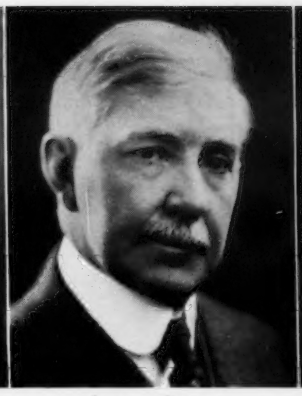
Frank J. Goodnow
1904-05



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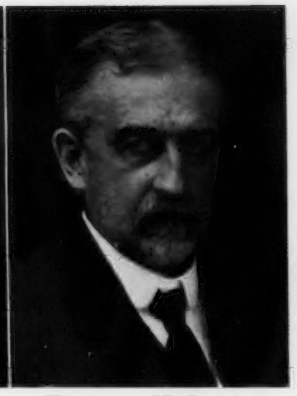

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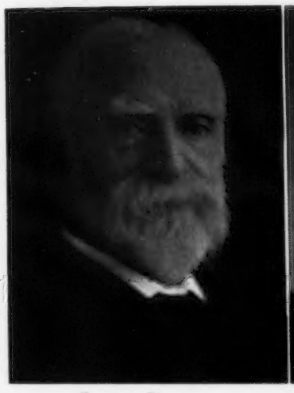

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Woodrow Wilson
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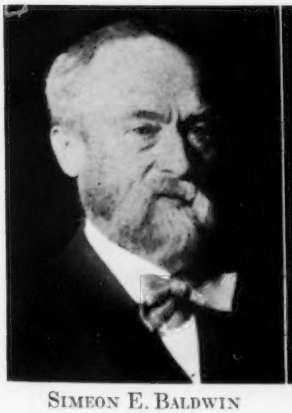

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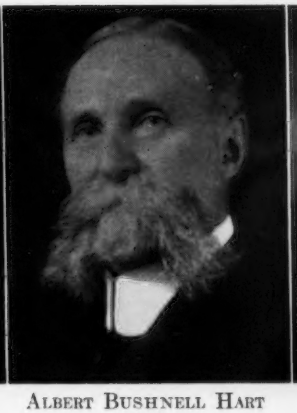

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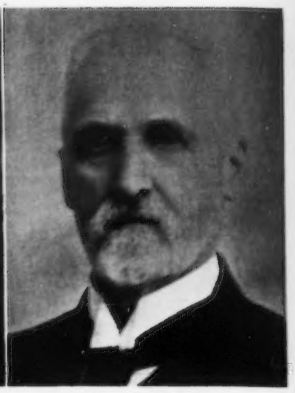

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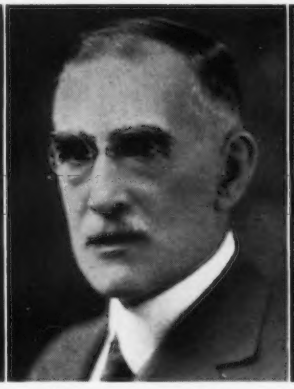

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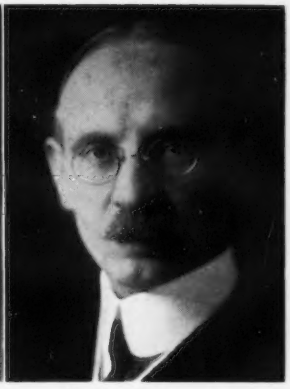
1918-19



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1920

LEO S. ROWE
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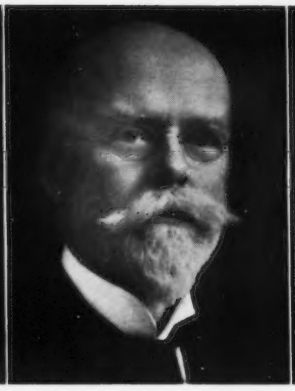

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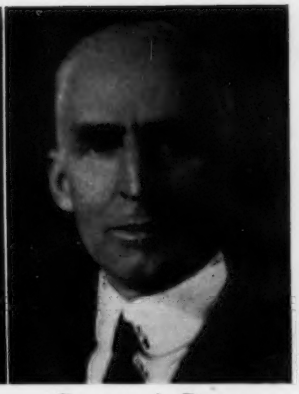

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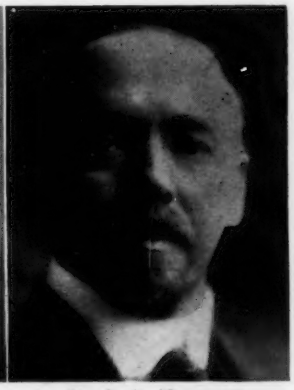

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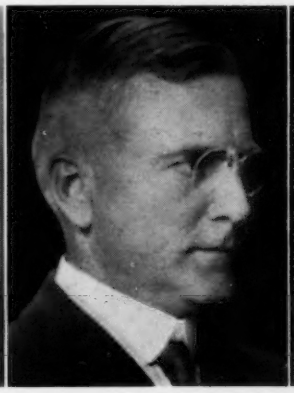
1929

BENJAMIN F. SHAMBAUGH
1930



EDWARD S. CORWIN
1931

WILLIAM F. WILLOUGHBY
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ISIDOR LOEB
1933

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FRANCIS W. COKER
1935

ARTHUR N. HOLCOMBE
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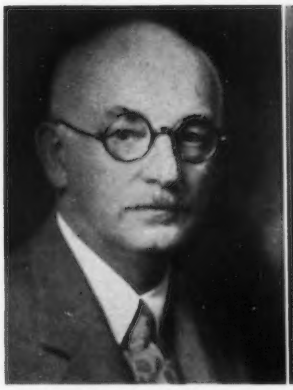

THOMAS REED POWELL
1937

CLARENCE A. DYKSTRA
1938